United States Court of Appeals

for the Second Circuit

EXHIBITS

74-1581

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Vol. 1

ROBERT R. FELTON,

Plaintiff,

-against-

73 CIV.
2200-DBB

WALSTON AND CO., INC., et. al.,

Defendants.

UNITED STATES COURT OF APPEALS
FILED
JUL 1[illegible] 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

DEPOSITION of Plaintiff ROBERT R. FELTON, Pro Se, taken before Bernard Jacobs, Notary Public of the State of New York, held at the offices of Sullivan & Cromwell, Esqs., 48 Wall Street, New York, New York, on the 9th day of October, 1973, at 10:30 a.m., pursuant to Order dated the 26th day of September, 1973.

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oOo

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that all objections, except as to the form of the question, shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be subscribed and sworn to before any Notary Public with the same force and effect as though subscribed and sworn to before the Court.

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MR. WILLIS: Let's note for the record that this examination is being conducted pursuant to an Order of the Court dated September 26, 1973. Mr. Robert R. Felton, the plaintiff, is here and I will ask the Reporter to administer

the oath.

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ROBERT R. FELTON, Plaintiff, being first duly sworn by the Notary Public, Bernard Jacobs, was examined and testified as follows:

MR. FELTON: At the outset I would like to just say this: I was in touch with my office and I was informed that you are requesting the Court for an adjournment of the class action motion, and I am addressing this to you, Mr. Willis, a class-action motion because of the fact that you would like my deposition, plaintiff's deposition, and so I request this: That the original of this deposition which you will send me for purposes of my execution, that this original be sent to me within two days of your receipt of the same.

MR. WILLIS: Well, your request is noted but we will follow the procedure prescribed in the rules.

MR. FELTON: You are not going to do that? I want to know it for the record. I am going to appear on the 15th in Court and I want to memorialize this particular statement or your statement to this

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effect.

Are you going to send it to me in two days, two days after you receive it?

MR. WILLIS: Mr. Felton, we will comply with the rules and I am prepared to proceed with the examination. Are you prepared to proceed?

MR. FELTON: I am prepared to proceed.

EXAMINATION BY

MR. WILLIS:

Q Would you state your full name?

MR. FELTON: Just a moment.

Q Are you ready now to proceed?

A Of course.

Q Would you state your full name?

A Robert R. Felton.

Q What is your address?

A Eight Washington Avenue, in Lawrence.

Q Lawrence, New York?

A Long Island, New York.

Q What is your office address?

A 42 Third Avenue, Mineola, Long Island, New York.

Q What is your age?

A 44.

Q Would you state for the record what your

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educational background is?

A Yes. I am an attorney. I was admitted to practice in the Second Department in 1951, having graduated from Brooklyn Law School in 1950.

Q Yes?

A I am a certified public accountant and have been since 1954 or '55.

Q Yes?

A I took my undergraduate training at NYU at uptown and completed it at LIU.

Q Did you get a degree?

A I have two degrees. I have a degree, Bachelor, I believe, in Science, in Accounting.

Q Yes?

A And I have an LLB Degree in Law.

Q The Bachelor's Degree, your undergraduate Bachelor's Degree, was that from Long Island University?

A Yes.

Q When was that awarded?

A That was awarded somewhere in the neighborhood of 1948, '49.

Q Did you then enter Law School upon completion --

A No.

Q What did you do between college and Law School?

A I was going to college and Law School at the same time.

Q Yes?

A I was going to Law School in the evenings.

Q Yes?

A And I completed my education at Brooklyn Law School in the Evening Division.

Q When did you begin your education at Brooklyn Law School?

A When I was eighteen years of age, that is 19-- I imagine somewhere around 1947.

Q When did you get your LLB Degree from Brooklyn Law School?

A 1950, in August -- late August or early September of 1950.

Q Did you commence legal practice after your graduation from Law School?

A I commenced the practice of law approximately in the year 1953.

Q What did you do between the time you completed Law School and the time you began law practice?

A I was completing my -- experience requirement for purposes of becoming a certified public accountant. You are required to work for approximately three years.

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Q For whom were you working?

A As far as firms, this goes back many, many years. I don't really recall.

Q Yes?

A They weren't major firms. One firm was a major firm that has since been consolidated with either Peat, Marwick & Mitchell or Ross Bros. and Montgomery. It was a medium size firm.

Q Do you remember the name of it?

A Leslie Banks & Company.

Q Did you work for any other accounting firms during that period prior to 1952 and 1953 when you began the practice of law?

A As I said, I said 1952, it could be 1953.

Q I said in 1952 or 1953.

A I believe I worked for one or two others. By the way, I might add, in Leslie Banks & Company, I worked in the -- the Tax Department.

MR. WINN: Are you trying to cut off my hearing?

THE WITNESS: I am sorry.

A There was another firm that I worked for where the principal partner was a judge. I forget his name.

Q Do you remember the firm?

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A No, I don't.

Q This was an accounting firm in which the principal partner was a judge?

A Yes.

Q A sitting judge?

A I believe he was a retired judge. He was an attorney and a C.P.A.

Q Other than Leslie Banks & Company, can you tell us any other accounting firms that you worked for prior to 1952 or 1953 when you began the practice of law?

A No, I don't. As I say, this -- and not only -- would I not remember -- recall, but I don't have any records that would refresh my recollection to that, as far as that is concerned. This is a period of now twenty-five years ago.

Q Yes.

A And basically, the firm that I spent most of my time for was -- not most of my time, but a good portion of my time -- was Leslie Banks & Company.

Q Prior to 1952 and 1953, did you work for any other accounting firms?

A No.

Q You mentioned that you were admitted to the Bar in the Second Department in 1951?

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A Correct.

Q Have you been admitted to the Bar of any other Court?

A Yes, the Eastern District, U. S. -- United States Court, Federal Court, District Court for the Eastern District, and the United States District Court for the Southern District of New York, and to anticipate your question, I believe I was admitted to the Bar of these Courts approximately in the year 1955, 1956. I may be mistaken, but that is the best of my recollection.

Q Have you been admitted to the Bar of any other Court?

A No.

Q When you began your practice of law, did you practice alone or did you associate yourself with other lawyers?

A I have always practiced alone.

Q Where did you open up your first law office?

A My first law office was at 60 East 42nd Street.

Q Yes?

A That is the Lincoln Building in Manhattan.

Q From that time forward, did you devote all of your time to the practice of law or did you engage in any other activities?

A I have been -- from the time I first opened -- opened my first office for the practice of law to the present time, I have been solely engaged in the practice of law.

Q You mentioned that you were certified as a public accountant?

A Yes.

Q When did you get your certification?

A I believe I said before, I testified before, and I repeat it again, somewhere in 1953 or '54. Perhaps '55 at the latest.

Q Have you since that time practiced the accounting profession?

A No; not at all.

Q Never?

A I have never practiced the accounting profession.

Q How long did your office remain at 60 East 42nd Street?

A Sometime to the latter part of 1950. In the 1950's, I should say.

Q The latter part of the 1950's?

A Yes.

Q All right.

A Or maybe close to 1960, somewhere along that line.

Q To where did you move your law office at that

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A Garden City, Long Island.

Q What was the address?

A 61 Hilton Avenue, Garden City.

Q There again, you practiced alone?

A Yes.

Q How long did your office remain at the Garden City address?

A Well, there was only one other move and that was to my present location which was 42 Third Avenue, Mineola, and I believe I am at 42 Third Avenue somewhere in the neighborhood of six or so years.

Q Have you ever had any other lawyer associated with you on either a full or a part-time basis since you began the practice of law?

A No.

Q How large physically is your office?

A How large?

Q Yes.

A It's larger than for most individual practitioners because I have a very huge -- I consider huge -- large waiting room. I have a private office.

Q Yes?

A And I have a conference room. In fact, the office that I occupy now, when I first took it over, accommodated

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two attorneys, one in the conference room which was his private office, and one in my private office.

So now, as I say, this office which accommodated two attorneys accommodates myself.

Q Is there a space for a secretary?

A Oh, sure.

Q And you do have a secretary?

A Yes.

Q Is that a full-time secretary or part-time?

A Yes, full-time.

Q Is she the only employee that you have?

A Correct.

Q And do you have a library?

A Yes.

Q And how large a library do you have?

A My library is not large because -- I happen to be a member of the Nassau County Bar Association and I am approximately three blocks from the Supreme Court of the County of Nassau which has a huge library which is at my disposal, of course, during -- 9:00 to 4:30, and I have had the occasion, and as a matter of fact, I require the use of this library on a very -- a very consistent basis.

Q Do you subscribe at your office to any

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Securities Law Reporters or publications?

A No.

Q Do you have the Federal Reports?

A As I say, this is available to me and I have made use of the Nassau Supreme Court Library for this.

Q Yes, but you do not subscribe to the Federal Reports yourself?

A I feel it would be a duplication in view of the fact that I have the convenience of individual rooms up there for purposes of my -- of my -- legal work.

Q Do you have the United States Code in your office?

A Once again, I refer to my previous answer. No, I do not.

Q What type of practice have you had over say the last four or five years? What type of legal work do you do?

A Litigation, litigation.

Q Is it solely litigation?

A Solely litigation. Of course, when I say "litigation it doesn't mean that cases are litigated to conclusion. Hopefully, a good number of my cases we will prepare, the overwhelming amount of them, we will prepare are settled. But at the same time, basically, this is what I

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consider to be litigation.

Q But you do not handle wills or estates or real estate matters, I take it; is that correct?

A No, except occasionally for a friend as a favor, but basically I would say I am -- a hundred percent litigation.

Q What type of cases have you handled over the last four or five years?

A Basically, I represent litigants in the negligence field.

Q What percentage of your practice would be devoted to matters in the negligence field?

A The greater proportion, the greatest proportion, obviously.

Q Over ninety-five percent?

A Yes.

Q Apart from your negligence cases, what other kinds of cases have you handled over the last four or five years?

A When you said before, when you suggested ninety-five percent, I would say it would be closer to complete, the negligence practice in the litigation field.

Do you see what I mean? In other words, when you are talking five percent, this is perhaps those cases

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that I handled as a courtesy to friends, but they are not billing cases as far as fee-wise.

Q So far as billing cases, would it be correct to say that a hundred percent --

A Yes.

Q -- of your work has been handling negligence field?

A In the litigation field.

Q When we say "negligence," this generally refers to automobile accident cases; is that correct?

A Well, automobiles, product liability, railroad cases, malpractice cases.

Q Is the present action the only securities case that you have ever been involved in?

A No.

Q What other Securities Act case have you been involved in?

A Presently, I am involved in the Equity Funding litigation.

Q That is the only other securities case in which you are involved?

A Correct.

Q You are a plaintiff in that case, are you not?

A Yes.

Q What is the stage of that case at the present time?

A Well, I don't know what you mean by "stage."

Q Is it near trial? Is it in the discovery stage?

A In the discovery stage.

Q What is going on at the moment?

A In the discovery stage, we are presently in the -- in the -- conferencing for purposes of a consolidated unified complaint.

Q There are many plaintiffs suing out of the Equity Funding problem; isn't that correct?

A Yes. I would say -- well, I'll just say you are correct.

Q What is the title of that case that you have?

A I don't have the title before me.

Q Well, would it be Robert R. Felton, Plaintiff, against --

A Yes.

Q Who was the first-named defendant?

A I -- it might be Equity Funding Corporation of America.

Now, once again, as I say, this is purely off -- in

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the course of my memory.

Q You weren't the first plaintiff to sue in Equity Funding, were you?

A No, but I was pretty much -- one of the first plaintiffs to sue.

Q In drafting the complaint against the Equity Funding defendants, did you follow the form of complaint that other plaintiffs had used?

A No, not really.

Q You had one available?

A No, I didn't have one available either.

Q You say, "not really"?

A That's right.

Q Did you have --

A Are you suggesting that what I did was I waited and perhaps copied somebody else's?

Q I am just asking whether you did. I am not suggesting anything.

A I want to say this toyou, if I may: Moore's Form Guides I am sure you have referred to in drafting complaints; haven't you, Mr. Willis?

Q This is not my deposition.

A I understand. This is a rhetorical question and you have given me an answer.

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Q Would you answer my question, Mr. Felton?

A Would you repeat your question?

Q In drafting the complaint which you filed against the Equity Funding defendants, did you follow a form which had been used by another plaintiff in that litigation?

A And I said, "Not really."

Q And I am asking you now, what do you mean by "Not really"?

A What I mean, sir, is this: I did my own work. By that, I plotted in my mind what I thought a good complaint should be composed of. I first traveled to the -- or walked to the Supreme Court Library and spent many hours reading a two-volume work by Professor Bromberg on Securities for 10B5 Violations as well as other sections of the Securities Exchange Act of 1933 and 1934. I spent hours reading the Wall Street Journal accounts of the Equity Funding fraud as it was unfolding, read other accounts in The New York Times-- these are all available at the library -- put my notes together, spent some time looking at some of the other complaints that some of the other people had done because I realized there would be a number of litigants involved in this case. And, as I said before, we are basically looking

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for a unified consolidated complaint.

At the same time, a number of defendants in the Equity Funding case were not defendants in a lot of the other actions. As a matter of fact, I believe that in my case there are at least two or three or four defendants who are not defendants in any of the other actions pending in the Equity Funding litigation.

Q Yes?

A So, if you are asking me if I referred to any other complaints, yes, I did, but only after I had my own notes in mind and decided who I was going to sue and what I was going to sue and after spending time reading the Wall Street Journal and New York Times as well as Barrons' accounts of it, especially in view of the testimony -- not the testimony, but the statements of the insider and also the controller, I don't want to mention names at this point, of the Equity Funding, who disclosed the fraud.

Q In your complaint in Equity Funding, did you copy any of the allegations from the complaints which will be filed prior to yours?

A Did I copy?

Q Yes.

A No. When you copy -- I photostated one or two

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paragraphs, compared their thinking to my thinking and presented what I considered to be my complaint based upon what my findings are and based upon what my understanding of the fraud laws, security laws that were involved are.

Q Is it your testimony that the precise allegations in your complaint were not copied from comparable allegations in complaints filed prior to yours?

A What is not my testimony. My testimony is what I have previously said.

Q Well, did you copy into your complaint allegations from complaints filed by other plaintiffs?

A Where the thoughts in those complaints coincided with what my understanding of what the fraud was and the fraud laws, I used their thoughts.

Now, if you said "copied," I value too much my own educational background and my own abilities to think and reason to have copies just from the standpoint of copying.

Yes, if you would say this: That if there are other attorneys who have prepared certain points which I think are correct, perhaps you might say this would be a variation on a theme. Basically, we are all looking

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for the same thing in that litigation and that is for purposes of -- reaching a proper stage of a result.

Q In order to bring this area to a close, if I were to bring into the room right now your complaint in the Equity Funding case and the complaints of other plaintiffs filed prior to yours, would we find any of the allegations that were word-for-word identical?

A I imagine so. And I say this to you: That's the same way that I prepared and I have prepared in the past, using Moore's Forms and using Bender's Forms, using forms that are available in the field of standard complaints of any type.

For example, an allegation of -- in a particular negligence complaint denying contributory negligence, I would venture to say in practically any complaint that you would find the same allegation, that is, the accident was occasioned solely as the result of the negligence of the defendant and without any contributory negligence or any contributory negligence on the part of the plaintiff.

Does this mean that if the copy is made, if this was wrong law, that I would copy it? No.

If what you are saying, sir, is that I just jumped on the bandwagon, I say, no.

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So, if you have something to bring into the room, bring it in.

Q Would you --

A And believe me, if the facts are that there were certain prima facie allegations which are the same or similar to others, I say this; that I believe they were correct.

My complaint on the other hand covers other defendants and if you say to me, sir, that my complaint is an exact copy from allegation 1 to allegation whatever it is on the Equity Funding matter, any other complaint, I say show it to me, sir. Let the record speak for itself.

Q Your work on the Equity Funding matter commenced in 1973; is that correct?

A The disclosures were sometime, I imagine, in the middle of March of '73.

Q And am I correct that your work on the present case, Felton against Walston, also commenced in 1973?

A Yes.

Q Prior to 1973, have you had any experience of any kind with actions under the Securities laws?

A I was very interested in the Four Seasons Nursing Home securities fraud for two reasons. Firstly, the

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scope of it.

Q Yes?

A And secondly, the fact that I lost money on it through Walston and Co., and at that time my registered representative, James Nissan. So I spent a lot of time in Federal Court reading.

I was also interested in the SEC against Texas Gulf Sulphur just from the standpoint of the entire background of the reports because at the time I vividly recall -- not vividly recall but I recall the newspaper accounts as to the disclosures and non-disclosures.

So I spent time at it. There is one case, I believe -- all right, that's not important.

Q I am really not asking about cases that you may have had some interest in.

A It's more than interest, sir. I actually read some of the complaints and I spent sometime looking at some of the -- well, I read some complaints, I should say.

Q Apart from the action which you have commenced here and the action which you commenced in the Equity Funding matter, have you handled any litigation or have you represented any client in any Securities Act matter?

A No.

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Q How many cases over your career have you tried to a conclusion?

A That's not a fair question. I will explaint to you why.

My understanding of the class action suits is that very very few of them go to a final conclusion. If you were to ask me how many cases I was involved in where I selected a jury, where I presented the plaintiff's case and based upon what my proof was, that the case was settled, you would get a fairer picture of my ability as an attorney in court.

How many cases have I tried to a conclusion?

Q Yes.

A I say this, sir: My cases are very well prepared and I am prepared to try any case to a conclusion.

At the same time, I am usually disposed to compromise and settlement. So very rarely, percentage-wise, are any of the cases, if you would take the number of cases that I actually come into court with, select a jury -- to give you an example, I selected a jury within the last two weeks on two cases in Supreme Court for the County of Nassau. Both of them -- both cases were settled. One of them in A Part before Judge Lynd, and the other case at Trial Term, Part I.

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Q Yes?

A And I am not reckless to the point of not heeding a compromise or a settlement. At the same time, my cases are well prepared to be tried to a conclusion.

Q Well, I think everyone agrees that settlement is always commendable, but, have you tried any case to a conclusion?

A Oh, yes.

Q How many?

A I would say in the last four or five years, in the neighborhood of 25 to 30, 20 to 30.

Q 20 to 30 in the last four or five years?

A Five years. I sould say perhaps 20 or so would be more conservative than the 30.

Q Yes?

A And this of course is purely right now a very speculative figure. It is an approximate figure.

Q What is the largest verdict that you have ever obtained in any case?

A The largest settlement that I obtained, I will tell you this first, was $275,000, which was obtained within the last three weeks.

Q Yes?

A In the Supreme Court, County of Nassau. This was

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a case that was on the calendar in Trial Term, Part I.

Q What is the largest verdict?

A Under $10,000.

MR. WINN: Did you say under $10,000 or $110,000?

THE WITNESS: Under $10,000.

Q Did you say under $10,000?

A Yes.

Q Would it be fair to say that most of the negligence cases which you have handled have been in that range?

A Under $10,000?

Q Yes.

A Most -- a good part, yes.

Q Yes?

A And the reason I would say is this: It is not the severity of the case or it's not the question of liability that determines it but the way the insurance law is in New York State. The great majority of those cases are drivers, I should say, insured in New York State, as you may know, of the minimum policy of $10,000 and $20,000. So it's nothing to do with the complications of the case or the size or the value of the case as much as dictated by the fact -- and that's why I just would like to add

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at this point, most of my cases are settled because we have good law now that if cases have values in excess of $10,000 and if insurance comanies do not bargain in good faith, then there is a good chance that they may be responsibile for any loss to their defendants.

So most of the cases that are settled under $10,000, in view of the fact that where -- I would say any -- 85% of those drivers in New York State, that is the figure, I believe, are insured for minimum coverage of $10,000 and $20,000.

Q Have you ever taken any law school courses or post-admission course with PLI or some other body with respect to actions under the Securities Laws?

A Yes. There was a course that I took, as a matter of fact -- approximately two years ago or so. That was given in California, Los Angeles.

Q Who gave the course?

A I don't recall.

Q Do you remember who the instructors were?

A There were several instructors.

Q Do you remember any of them?

A No.

Q Was that the only course you have taken on Securities Law matters?

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A No.

Q In any case?

A No.

Q Never?

A When you say -- you mean prior to the Equity Funding litigation and this particular litigation?

Q Well, all right. Prior to that?

A No.

Q In Equity Funding you have asked to be a class representative, haven't you?

A I have asked, but basically what Judg Gagliardi has decided has been a team, a team of lawyers.

MR. WINN: A what?

THE WITNESS: A team of lawyers.

Q Has Judge Tagliardi ruled on the class motion in that case?

A No.

Q No class representative has been designated?

A No.

Q Have you withdrawn your request to be class representative in this case?

A No.

Q It just hasn't been ruled on; that is the status?

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A No. Actually what is involved here is there is another problem. There is a multi-panel meeting that has just been held in New York determining exactly where most of the work will be done. There are a number of attorneys who are from California and there are other attorneys from New York.

Q Do you expect to be very active in Equity Funding cases?

A As I say, it depends on where most of the work will be done.

Q If it's transferred to California --

A Then, obviously, most of the work will be done there.

Q Have you ever been counsel to any class representative?

A No.

Q Were you ever appointed by a court to any, referee, trustee, referee or any position at all?

A No.

Q Have any complaints ever been made against you in your practice of law?

A Yes.

Q By clients?

A Correct.

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Q How many?

A Two.

Q Were they referred to local Bar Associations?

A Yes.

Q Were there hearings held?

A No.

Q What was the disposition of the complaints?

A In both cases they involved clients questioning if there was enough motion on plaintiff cases. One client wrote the letter approximately three months after the case was instituted and the other one, if I recall, maybe in a period of four months after.

In both cases I wrote letters. Now, mind you, when I say -- for a moment, before I interject this, this is a practice of law since 1953 or '54, twenty years, and in both cases, I wrote letters explaining what work was done.

Q Yes?

A And I received letters back thanking me, in essence.

Q Letters back from the Bar Association?

A Yes, of course. I take pride in my practice of law and you can't -- handling hundreds and hundreds of clients' accounts for certain people who perhaps have a question or two or perhaps putting it in the form of

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complaint.

Q Were there hearings?

A There were no hearings, and after my writing a letter explaining what I did on the case, that was the end of that.

Q Have you ever had any dealings of any kind with Marine Midland Bank?

A Dealings, no.

Q In your complaint, your amended complaint, paragraph 6, there is an allegation, and let me just read it:

"Plaintiff estimates that the class is in excess of 8,000 members and that joinder of all members is impractical."

How did you calculate that number, 8,000?

A Now, I am going to give you some figures but it is -- they are going to be off the top of my head.

I would just like to say that they will be subject to correction. At least I request correction when I am not in a possition to refer to my papers.

Q If you would like to refer to papers now, that's all right.

A This will take hours to find. There were approximately, at the end of 1969, 1,000 recorded stockholders. In 1972, the number swelled to 1900.(Referring to papers.)

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The number of shares outstanding in 1969 swelled from -- as of June 30, 1970, 1,442,968 of the 31 common stock class A issued and outstanding, to July 2, 1971, 1,790,768 shares of common to somewhere in the neighborhood of over 2,400,000 in 1972.

Let's see if I have -- if I am in a position to give you the exact figure. Otherwise, I request that we leave a space and I could fill in that when I execute the deposition.

Q Assuming that that is roughly right, how do you get from those figures to 8,000 class members?

A In the year 1971 -- 1970 and 1971, as well as 1969, I don't have the exact date, when volume and recent origin of over-the-counter transactions have been reported, and there was no volume that was reported, what we have really here is this: We have distribution of shares to shareholders. We also have activity to push stock from 4 and 3/4 on July 9, 1970 when I first purchased it, to $24 sometime after July of 1971 or in June and July of 1971.

Q Is the figure 8,000 in paragraph 6 just a shot in the dark?

A It's an estimate which I will be in a position to get my facts when I get my discovery. It may very well

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be more innocent victims who were fleeced over this period of time because I am sure of this, as sure as I can be without the facts that you and the other defendants have in your possession as well as the transfer agents. And even that won't be very good because there could very well be a number of transactions where there wouldn't be use of a transfer agent on short-term transactions. But I am sure, based upon what my studies of this particular case are, that those 1900 stockholders -- shareholders holding over two million shares of the stock are of a different composition to the thousand shareholders who were at the end of 1969. And I am sure there were a number -- many, many thousands of people who were involved in these transactions during the time that the stock was being pushed, as I said, from the neighborhood of approximately $5 to close to $25.

You get a lot of activity and need a lot of trading to push the stock through these so-called resistance barriers to a point where it reached the high before it took its -- the beginning of its plunge.

Q Is it then, as I understand, your testimony that the figure of 8,000 which is in paragraph 6 is merely a guess and that you don't have any calculations or figures which will show the number of members in this class?

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A Not at this time.

Q What is the definition of the class on which you are relying here?

A The class?

Q Yes.

A Those purchasers and sellers of 31 securities and I would like to define it more closely.

31 securities, they are common stock class A, (Referring to documents.) from the filing of the 1970 10K to date, but certainly to the filing of the 1972 10K, --

Q Well --

A -- When most of the fraud -- not most of it, when the fraud really was placed in prospective.

Q When was the 1970 10K filed?

A Somehwere in the month of December of 1970.

Q Did that come to your attention when it was filed?

A No.

Q When did you first read the 1970 10K of 31?

A In 1973.

Q Do I understand that your class includes all purchasers and all sellers?

A All purchasers.

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Q But not sellers?

A No.

Q All right.

A That -- I -- I, at this point, refer to the previous answer where I said "sellers," and I realize what I meant because they are all purchasers.

Q All right.

A And I say this: I reserve my rights to amend the complaint. This is what I really meant, if there are any short sellers or any other types of transactions of one type or another or increase sales or match sales. At this particular point, the class action and the class are all purchasers.

Q What is an increase sale and a match sale?

A What are they?

Q Yes.

A Where I -- what I am going to do is tell you how I define that in relationship to what I said just previously it was.

Sometime during the month of January of 1971, I wanted to sell securities that I had originally purchased in 1970. And when I called Mr. Nissan and I asked him what the quote of the stock was and he said it was in the neighborhood of around $7.00, I said I wanted to sell

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it and not to get into any reasons at this particular point because I reserved that when he -- because what I am doing is -- I don't want to get a feel from what your question is of increase or match sales, and Mr. Nissan said would I mind very much if he increased my sale. And I asked him what he meant, and he said to me he had a purchaser, that he didn't have to look for anyone else who would buy my stock at that price.

When he said that I withdrew my order to sell.

Q Did you tell him why you withdrew the order?

A He obviously was in effect telling me why I shouldn't sell; there was somebody he was recommending the stock to at $7. So in effect why should I sell my stock if there was somebody so eager that he wouldn't have to go looking for someone who was willing to take my stock.

Q What was --

A He was right at that point too because the stock proceeded upward.

Q What is a match sale?

A In the reference that I used, I used the terms interchangeably, increased or matched meaning having someone who could buy what you have where you didn't have to rely on the bid and asked, because in the over-the-counter market there is a spread between the bid and asked

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price. And so -- I am referring to this in my own particular terms. I am not a broker and I am using the term in a layman sense as far as the brokerage field is concerned. It is where the broker or the registered representative has a seller for the exact same price that the purchaser wants to sell, where there wouldn't be any need to take a lesser price or to look for a customer.

Q You allege in your complaint in paragraph 7 that you are, and I quote, "a knowledgeable person." What do you mean by that?

A If I learned one thing in law school, it was to be able to think, understand and to reason, to write briefs and to prepare matters, to counsel, to understand, to reason.

No, I would like to finish. Knowledgeable to this extent: What I have, what I brought in and what I was prepared to use, my own abilities to fill in the gaps.

Q When you used the word "knowledgeable" in paragraph 7, did you mean to imply that you were knowledgeable with respect to the purchase and sales of securities, the securities industry?

A No, certainly not.

Q You are not knowledgeable in that area, I

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take it?

A No.

Q All right.

A That's why I went to a registered representative and relied on certain statements that he made to me.

Q Did you mean that you were knowledgeable as a lawyer under the Securities Laws?

A Knowledgeable as a lawyer with the ability to, with my use of library techniques, to supplement my general knowledge with the specific knowledge that is required by this particular case.

There are many, many cases in my own practice that involve novel situations. I have the ability which I have honed over the years to be able to go to where whatever the work or treatise is, to glean what I feel is necessary for the situation.

Q Do I understand you to say that this case is, as far as you are concerned, a novel situation but that you feel that your general legal knowledge qualifies you to handle it?

A When I say "novel," I was referring to my other practice.

If you recall, I told you previously that I spent time with the Four Seasons Nursing Home litigation as

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an observer and also as an injured person.

At that time, there was a class action suit where it was filed on my behalf as a stockholder.

So, as an attorney as well as a party there, I was interested as to what the proceedings were and how the proceedings were going.

So when I say "knowledgeable," it's based upon the fact that I was interested. I felt at that point I was being represented but I was learning. That's why, as I say, I took this course.

Q When did you first read the Securities Laws?

A The Securities Laws?

Q Either --

A Are you saying that I picked up the Securities and Exchange of 19-- the 1933 Act or the 1934 Act and read it? No.

Did you ever read it? The idea is, where you are interested in a particular part, you go to what you are interested in.

Q I take it you have never read either the '33 or the '34 Act in its entirety?

A No.

Q When did you first read any portion of either the '33 or the '34 Act?

A In 19-- during my college years. I don't -- wherein I said 19-- I don't remember the date. I believe I took a course.

Q What course did you take in your college years?

A I don't remember the title of it but it involved -- it didn't involve securities fraud per se, but it was a combination course which referred to the Securities Laws of '33 and '34 and also to the Securities and Exchange Commission. Of course, there have been many, many developments since that time. I referred to when I was first interested, as I say, in the Four Seasons litigation, but I made most use of them -- in the present -- in the last few months.

Q Is it fair to say that only within the last few months you have looked intensely at any part of either the '33 or the '34 Act?

A No.

MR. WILLIS: Let's take a short recess.

(Whereupon, there was a short recess taken and the deposition resumed.)

BY MR. WILLIS:

Q Mr. Felton, when was the first time that you looked intensively at any provision of the '33 or '34 Act?

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A I believe that's been asked and answered.

Q No. I believe I asked you just before the recess, Mr. Felton, whether or not the first time that you had ever examined it was in the last few months?

A No, but you asked --

Q And I believe you said, "No."

A What? First of all, I -- are you testifying for me?

Q I am trying to clarify it.

A No, I -- did.

Q If I misunderstood your answer, bear with me and let me ask you again and maybe that will -- will --

A I would like to refer to the last three questions before the recess and you will see it's been asked and answered. In fact, the last five questions.

MR. WILLIS: Read it back, please.

(Requested portion of the record read back.)

Q Let me repeat the question.

A Do you want to strike everything before?

Q No, let's leave it.

A All right.

Q Mr. Felton, when was the first time that you looked intensely at any particular provision of either the 1933 or 1934 Securities Act?

A During the Texas Gulf Sulphur litigation.

Q In your complaint, it is alleged that there are common questions of fact common to the class.

What are these common questions of fact?

A Fraud, reliance, to various degrees, causation of loss, the various defendants who are named in this particular law suit violated among other things Rule 10B5.

Q Yes?

A Rule 10B5 as alleged in the various causes of action which caused the price of this stock to be increased. The -- for example, the cause of action as to Main Lafrentz, as to their certificates which appeared in the annual report, as to the Data Bank license which was purchased at cost for one million dollars, which item represented approximately 62% of the total assets of 3i Company on the July -- June 30, 1970 balance sheet which, as it appeared in the notes to the financial statement, contained material --- representations, misrepresentations of material facts as well as omissions of material facts which made the balance sheet as well as the annual report misleading to various stockholders.

That's an example of common questions of fact and law as far as the -- as far as the members of the class.

Then there were other things involving purchases

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of the -- these acquisitions, purchases of these businesses which were not performed, were not done at -- as I will show, at arms length. In one case, well over three million dollars which was not disclosed, the worthlessness of it, until the filing of the 1972 10K by 3i where it was written off. And by the way, I might add the Data Bank license, the one-million-dollar figure, purchased at cost, which was also written off as worthless on the 1972 10K.

The various elements and questions of fact involving this as well as the role of Excerpta Medica Foundation, the contributing role in these violations; the fact that Peter A. Warren, who is a defendant in this law suit, at one time wore three hats, a director of Excerpta Medica Foundation Stichting, which is the parent corporation, then becoming a director of 3i and an attorney in fact, and agent of both the parent corporation, Excerpta Medica Foundation, signing the amendatory agreement in 1971, I believe while he was the director of Excerpta Medica, the parent corporation, director of 3i Company, signing the amendatory agreement as an attorney in fact and/or agent of both Stichting, the parent corporation, Excerpta Medica Foundation , as well as attorney in fact and/or agent or both of the defendant Medische

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Referatan or referred to as Medische.

The questions --

Q Mr. Felton, I really wasn't inquiring into your legal arguments. I was merely asking --

A I understand.

Q -- the common questions which I contend are in the case.

A These are common questions of fact. I am just outlining the questions of fact, what the facts are that we will prove. You may call them questions of fact, of law and fraud.

Q We will get back to that a little later.

A Yes.

Q Let me ask you this question: You have sued a number of defendants here. This is a complicated case that may very well be several years before it is concluded. How do you, as a class representative, propose to finance the expense of the case?

A I am prepared to give a bond to cover the costs of notice to the class after I have determined, and you will respond to my discovery so that I determine specifically, you know, who are the people to be notified.

So I am prepared to give a bond and I am also prepared to spend whatever is necessary here to bring this

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case to a conclusion.

Q Have you made any estimates as to how much will be involved in bringing this case to a conclusion, assuming that you are designated the class representative?

A I made no estimate. At the same time, as I said before, I am prepared to give a bond to the Court to protect so that all expenses will be taken care of by me.

Q By you personally?

A Yes.

Q Is your financial condition such that you can finance a long, hard-fought litigation which this is very likely to be?

A Yes.

Q What is your present net worth?

A I will say this, sir, it was a lot higher before I met Mr. Nissan.

MR. R.W. LYON: To the degree it is necessary, I will move to strike.

Q Could you give us an approximation as to what it is today?

A Let me give you an idea of how I feel about this case.

MR. KUNEN: Answer the question. Let's get an answer here.

A I am going to give you an answer in this way:

My home is -- has a mortgage of only $4,000 on it. I am prepared to mortgage my home, for example, to the highest mortgage I can get for one thing, to finance the cost of this case.

At the same time, I have a considerable practice. As I indicated to you just a moment ago, there was one settlement made in the last month of $275,000 where a considerable portion of that will be mine. That was made in the last month.

Q Yes?

A I have a good credit record. And so -- and so using the term "finance," I don't plan to finance this at all. I mean to pay this as I go.

At the same time, I will -- I will raise, if necessary, whatever money is necessary, and as I previously said, I am prepared to give a bond to the Court for purposes of protection as far as costs are concerned.

Q What is your net worth right now, approximately

A On the home and loan, $70,000, approximately.

Q Well, that's an asset.

A That's net worth, sir. In other words, -- yes, that's -- that's an asset in the sense if I would

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sell my home, my home would easily sell at $75,000. And as I say, I have a mortgage of approximately $4,000 to $5,000. So that's $70,000 right there.

MR. KUNEN: Is your home in your own name or your wife's name or --

THE WITNESS: My wife and myself.

A As far as the net worth is concerned --

Q You understand when I use the words "net worth," I am really talking about your total assets that may exceed ---

MR. KUNEN: He is an accountant.

MR. WILLIS: Certified?

MR. KUNEN: Yes.

Q What is your net worth? I don't really want to know about every asset or every liability.

A I understand. I don't have any liability except for the home --- for the mortgage.

MR. WINN: I can't hear you.

Q Can you answer that?

A I would say somewhere in the neighborhood of $40,000 to $50,000.

Q Net worth?

A Yes.

Q In order really to finance this litigation,

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you would be prepared to borrow money on your home?

A If necessary.

Q Where have you maintained stock brokerage accounts?

A Merrill Lynch.

Q Over what period of time?

A I would say approximately six months or less.

Q And what year?

A I imagine in 1969 to 1970.

Q All right.

A 1969 to 1970.

Q What other brokerage accounts have you had?

A Opoenheimer.

Q What period of time?

A Approximately two years. That is, two years prior thereto.

Q What other accounts?

A Walston and Company.

Q What period of time?

A From 1970 to 19-- to the present time.

Q Do you still have an account with Walston?

A An inactive account where there is a debit balance, where 2,000 shares of 3i Company common stock are, and --- (Referring to documents.)

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Q Would you consider yourself a sophisticated investor?

A No, not at all.

Q All right.

A Anything but, sir.

Q How did you get introduced to Walston and Company?

A My brother heard of Mr. Nissan.

Q What is your brother's name?

A Dr. Maxwell Felton.

Q He had heard of Mr. Nissan?

A Yes, he never -- he -- I don't think he dealt with him.

Q What did he tell you about Mr. Nissan?

A Well, apparently he said there were a number of doctors in Brooklyn who are using Mr. Nissan and -- he suggested that I contact him.

Q Did he say anything about Mr. Nissan's qualifications or what luck these doctors had had with Mr. Nissan?

A The only thing really he said was that Mr. Nissan, his -- -- his hearsay which you are asking for now, evaluation of Mr. Nissan, was that he was bright.

MR. WINN: He was what?

THE WITNESS: Bright.

MR. WINN: Bright?

THE WITNESS: Yes.

Q Did you get in touch with Mr. Nissan?

A Surely.

Q Did you call him on the phone or see him personally?

A I called him on the telephone.

Q When was this?

A (Referring to documents.) Do you have an idea, Mr. Lyon?

MR. LYON: No, I'm waiting to hear from you.

A Sometime at the end of 1969, the beginning of 1970, I believe. I imagine in 1969, yes.

Q What did you say to Mr. Nissan in this telephone call?

A I told Mr. Nissan that I owned stock in some companies and I asked him if I could transfer my stock to his company and open an account there. Mr. Nissan said to me that he only had certain stocks that he followed and that the only way that he would take me as a customer would be for me to sell my stock and send him a check so that I could begin an account with his purchasing those stocks that he would recommend to me.

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Q What did you say to that?

A I said, "Fine." I would try to sell the stock at the time that I could get -- what I considered to be a fair price for them, and that I would be in touch with him.

Q Did you then sell everything that you had?

A No.

Q But you did sell some securities?

A Yes.

Q Then did you transfer the cash to Walston?

A I brought a check in. It was the only time I ever met Mr. Nassan, the day I brought this check in for $51,595.02.

MR. R.W. LYON: Can we fix a time on that?

THE WITNESS: I don't know.

Q When did you bring the check?

A I don't know.

Q Do you remember what year it was?

A I imagine it was 1969.

Q This was a check of Merrill Lynch?

A Yes.

Q Payable to you?

A Yes, which I endorsed over to Walston and Company.

Q Do you have any record that would show when Merrill Lynch issued a check of that nature to you?

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A No, I imagine in 1969. Yes, sometime in 1969. That was the only time I ever saw Mr. Nissan.

Q Have you produced here today your entire account with Walston and Company?

A As I indicated to you when I first walked in, as I indicated then, I wrote up a -- summary starting with the check from Merrill Lynch of $51,595, --

Q Yes?

A -- plus those purchases that Mr. Nissan recommended to me as well as a check, an additional check which I sent to Mr. Nissan, to Walston, of $38,404.98. And during that period of time two checks were sent to me of $10,025. And, as I say, I indicated all this to you when I first walked in and also said to you that I didn't have those records for some reason. But, also, I had copied from my own records those purchases. As I pointed out to you, no one of those purchases involved the purchases of 21 Company stock.

Q Could we have that memorandum marked as an exhibit by the Reporter?

A Surely. By the way, you have a copy of it and you are looking at it.

Q Yes, thank you.

MR. WILLIS: May we mark as Defendant's

Marine Midland Exhibit 1 for identification a one-page memorandum which Mr. Felton has just now described and produced, bearing no date.

(One-page memorandum marked Defendant's Marine Midland Exhibit 1 for identification as of this date.)

MR. FELTON: By the way, I would like to at the same time request that the photostat which you have which I gave you of this memorandum be also marked so in case for any reason either one is lost, there will be one available.

MR. WILLIS: I don't see any reason to be marking copies.

MR. FELTON: It is a photostatic copy that you have before you.

MR. WILLIS: There is no end to that problem.

MR. FELTON: We are not going to do that. At the same time, I feel in view of the fact that you have marked it there and there is an extra copy on your desk, there wouldn't be any hardship to have that also marked by the Reporter at this time.

MR. WILLIS: It just burdens the record unnecessarily. When it gets to your time to --

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MR. FELTON: Why not keep it in the context of the record? It seems to me there would be no reason for not having a photostatic copy also marked for identification.

MR. WILLIS: When it comes time for your questioning, you can mark anything you want, Mr. Felton. But I don't propose to mark the same exhibit twice.

MR. FELTON: Okay.

Q Mr. Felton, referring to --

MR. KUNEN: May I see that, please?

MR. WILLIS: Yes.

Q Referring to Exhibit 1, the figure of $51,595.02 representing the Merrill Lynch check, where did you get that figure from when you prepared this memorandum, Exhibit 1?

A Basically what I do is, or what I did was when I had an active account I reconciled monthly the brokerage statement.

By that I mean I checked whatever slips came in for purchases, of course, also any payments, any checks that I make payable or any receipts that I received back from the brokerage firm, to determine if the running balance on a monthly basis was correct, similar to what

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you would do if you reconciled your check book.

Q Is there some record that you presently have from which you got that figure?

A The same thing -- it's just an exact -- not exact, but it's a copy of what I have, a pen copy of what I have at home. And the only reason I brought it was because I said to you earlier, and I repeated just a few moments ago, I don't know where these statements are and -- it has no connection whatsoever with any purchase of 31 because the first purchase of 31 was in July of '70 and this -- as you say, Exhibit A ends on March 31 of 19-- March 31, 1970.

As I say, the future purchases I had of 31 was July 9, 1976.

Q Do you have copies of your Merrill Lynch statements of account?

A No, I don't.

Q Do you have your opening account statements with Walston and Company?

A This is the subject that I said, of this particular exhibit.

Q I understand it is the subject, Mr. Felton, but I still don't know where those figures on there came from.

I am asking you: Do you have the statements of account of Walston and Company?

A No, I don't. I don't know what happened to them. They are not --

Q They are missing?

A They are missing, yes.

Q What is it that you copied to come up with the information on Exhibit 1?

A At home I have a rough -- yellow pad which is a running balance, which I reconciled -- I reconciled by the month. I didn't bring all of it because I brought the statements instead. If I were to bring that and show it to you, basically all it is is that which I produced for the few months not involving 31 transactions, plus everything that went along up until today (Indicating.) or not today, but pretty close to today.

I haven't reconciled, I imagine, the last couple of months because the only thing that is changing in my account is the interest being charged on the small debit balance that appears on the account.

Q Could I ask you that you produce this yellow pad that you are talking about?

A Of course.

Q I think that might answer my problem.

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A I could do that if it is your pleasure. I can -- I could provide you with a copy of it when I execute the deposition.

Q Well, perhaps it might be better if we don't finish today, that you could produce it tomorrow if we are continuing.

A Surely.

Q If we continue tomorrow?

A Surely.

Q Have you produced here copies of all the account statements with Walston and Company that you have in your possession?

A Surely.

Q Could we have those now and we will have the Reporter mark them?

A The originals as opposed to the photostats?

Q Yes, the originals.

A Fine.

Q Let me have them so I can describe them.

(Witness handing documents to Mr. Willis.)

MR. WILLIS: I would like to mark for the record as Defendant's Exhibit 2 for identification the statement of account which Mr. Felton had with Walston and Company for the period beginning

April 1, 1970, and continuing to, it looks like August 27, 1973.

(Statement of account beginning April 1, 1970, marked Defendant's Midland Marine Exhibit 2 for identification as of this date.)

THE WITNESS: I want to point out one thing to you. That is that somewhere along the line the name of Walston and Company has been recently changed. So when you are going down to the end, you will find that it's now called Dupont Walston, Inc., and that -- hopefully, we are going to get a stipulation to perhaps change the name.

But that's something that's not part of this deposition.

MR. WILLIS: This is not the time and place to be concerned with that.

THE WITNESS: No, I just thought I would mention it, parenthetically.

Q During the period of time that you had your account with Walston and Company, did you have any brokerage account with any other firm?

A I might have had an open account, inactive, as far as one or two stocks that I didn't consider at the time propitious to sell because of conditions in the market,

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as I previously indicated, of Mr. Nissan's request that I sell the stock and send him the money.

Q Is that your Merrill Lynch account?

A No, the Merrill Lynch account, the check that I previously indicated to you was the balance in that account.

Q Where was this other brokerage account that was inactive?

A I don't believe it was in Oppenheimer, but for a short time I had an account with a company called Drachman and Company.

Q Where are they located?

A In Manhattan.

Q All right.

A They were at the time. I don't know where they are now, but they only represented maybe a couple of purchases, as I say, and -- as a matter of fact, one of the stocks I still own that I never sold that they sent me.

Q When was Defendant's Exhibit 1 prepared?

A When was it prepared?

Q Yes.

A It was prepared for purposes of this deposition. So it was prepared in the last couple of days.

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Q The figure at the top is the check from Merrill Lynch. Then under that you list a number of purchases. Are those purchases that you made through Walston and Company?

A Yes.

Q And I believe you said that these were recommended by Mr. Nissan?

A Yes.

Q Then continuing down the page, there is an indication, "Check to Walston, $83,404.98."

A Right.

Q Was this additional monies that you paid to Walston?

A Yes.

Q What was the date that that check was delivered? Do you know that?

A The date of delivery or the date of the check?

Q Either one.

A I don't know. I didn't think that was important in view of the fact that 31 Company transactions weren't involved but I certainly would be more than willing to check it out and put the date of the check and also the date that it was cleared.

Q You say this Exhibit 1 has nothing to do

with 3i; is that right?

A (Referring to exhibit.) When I say it has nothing to do with 3i, it doesn't represent any purchases of 3i securities.

Q What was your reason for preparing it?

A The reason for preparing it was to give you an entire picture of my -- my Walston and Company account for purposes -- I thought perhaps that you would be interested in seeing it and I was sure that if I came here with a statement of 4/30/70 as my first statement, your logical question would be, "Where are the other statements?"

And so I -- firstly, as I indicated before, I don't have them for some reason. Secondly, I copied from my running balance or reconciliation to show you that there was nothing in there that involved any purchases of 3i Company securities.

Q Let me make this clear. Exhibit 1 reflects transactions with Walston and Company prior to April 30, 1970?

A Surely, because there is a balance on Exhibit 1 of 3/31/70 which dove-tails with the first statement which was marked Exhibit 2 which indicates on the first line, "Your cash account, $25,038.57, credit," which is the

last figure on Exhibit 1, the so-called reconciliation.

Q When you first spoke with Mr. Nissan on the telephone, which I think you said was either near the end of '69 or early 1970, did you tell Mr. Nissan what your investment objective was?

A I don't believe I said that I spoke to him first in 1969-1970.

Q That was my recollection. But when did you first talk to him on the telephone?

A You see, I'm not sure. I would say sometime perhaps in the beginning of '69 would be more likely when I spoke to him.

Q All right. In that conversation with Mr. Nissan, did you tell him what your objective was as an investor?

A Yes.

Q What did you tell him?

A Appreciation.

Q Is that all?

A Yes.

Q Did you tell him the type or kinds of stock that you were interested in investing in?

A No. I came to him because -- as I say, he was told -- I was told that he was bright, and in speaking to him, he

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told me that he was interested in special situations, that he couldn't follow every stock, that the stocks that he had, that he watched, that is, were special situations where he said there would be appreciation.

MR. R.W. LYON: Could I just interrupt for a minute, only to confirm that the statement which you have adverted to by Mr. Nissan was made during your initial conversation with him?

THE WITNESS: By the way, in answer to your question and also to -- refer to my previous answer, I use the term "appreciation."

MR. R.W. LYON: I'm not asking you that.

THE WITNESS: I'll answer your question in a moment. I used the term "appreciation." I don't recall now exactly what he said, but basically what I gleaned out of it the first time I spoke with him was special situations which would appreciate in value.

Q This was in your initial telephone conversation with Mr. Nissan?

A I believe so.

Q Did he ask you anything about how much money you were willing to invest and any other facts about your objectives?

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A He said that he wasn't -- he wasn't interested in an account beginning as small as mine. He said that he was interested in accounts with considerably more money.

I told him that I was going to liquidate some more of my stocks and send him some more money, and also, that I was getting more money coming in that I would send to him.

And basically, he said that the special situations that he had in mind had a record of success.

Q Did he tell you what they were?

A He mentioned some of the stocks that I since, after I opened the account with him, I purchased.

I don't recall specifically what it was because I wasn't acquainted with the names at the time.

Q Did you make any notes or memoranda of your conversation with Mr. Nissan?

A No.

Q Have you made any notes or memoranda --

A Mental notes.

Q Have you made any notes or memoranda of any of your conversations with Mr. Nissan?

A Basically speaking, when we talked I listened and tried to remember. I tried to remember. Don't forget, Mr. Willis, I came to him as a professional, bringing him

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my money, hoping that his brightness and abilities would appreciate the purchase that he recommended. I was interested and he had a story for me on every stock and every purchase.

And so, based on these stories, I purchased. He didn't have an account with me which was discretionary where I sent him my money and that he would purchase what he wished. He had a story for me.

Q Mr. Felton --

A Excuse me?

Q Mr. Felton, we are both interested in trying to expedite this deposition.

A I went to give you an answer.

Q My question was: Did you make any notes or memoranda of any conversation with Mr. Nissan? The answer is either yes or no, it seems to me.

A No, the answer is, "Yes, mental notes." I didn't purchase that many stocks and --

Q Did you make any in writing? I am not interested in your mental notes at this moment.

A You are not interested in my mental notes?

Q At this moment. The question was, did you make any memoranda or notes of any of your conversations with Mr. Nissan apart from what you can remember in your

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mind?

A No, nothing in writing.

Q Have you told us all that you can recall about the initial conversation on the telephone with Mr. Nissan?

A We talked, as I said, about the fact that he wanted me to send him cash for special situations that he followed, the fact that he had success, a good track record, and basically that the stocks that he would purchase would appreciate.

Q How much time elapsed before you next talked or met with Mr. Nissan?

A A few months.

Q Was that in person or was that over the telephone?

A That's when I was able to secure the check from Merrill Lynch disposing of my securities there. And I called him up and said, "I'm prepared to open an account and I want to come down and talk to you." Not talk to him, but, "I want to come down and give it to you."

Q What did he say?

A "Fine."

Q Did you meet with Mr. Nissan?

A For a short moment.

Q Where was that?

A At this office.

Q On Wall Street?

A Not at the present location -- at the location that he moved to. I don't recall the address now.

Q Was it downtown some place?

A Yes, of course, downtown.

Q You met him personally?

A Yes.

Q And how long did you meet with him?

A A very short few moments.

Q One or two minutes?

A Well ---

Q Five minutes, ten minutes?

A I would say it would be under five minutes.

Q What did you say to him and what did he say to you in those five minutes?

A I didn't say five minutes. I said under five minutes.

Q Well, would you answer the question as amended?

A "Thank you very kindly," something to that effect, "Pleased to meet you."

Q Did you give him the check?

A Of course.

Q Did you fill out any forms or give him any information about you?

A He --- he had two secretaries and so -- he said that the

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secretaries will contact me for the information and send me the forms toopen the account, which they did and which I filled out and sent it back to them.

Q Did you keep copies of those forms?

A No.

Q In the few minutes that you were with Mr. Nissan, other than "Thank you" and "Glad to meet you," what was said?

A I don't really recall because -- it was a little hectic that moment. It was during the trading day and he was watching the tape. There was some activity on the tape at the moment. So it was a conversation where there was talking to me and watching the tape at the same time. And so it was -- "Thank you. Nice meeting you. We'll hope to have it grow, appreciate," and, "I will be in touch with you and tell you what I want to buy."

Q Did he subsequently get in touch with you?

A Surely.

Q How much later?

A I don't recall.

Q Days, weeks, months?

A I do not recall.

Q How many conversations did you have with him over the next three months?

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A I do not recall.

Q But he did call you from time to time?

A And the reason -- is this: I don't have the statements of the initial period to refresh my recollection. I know this, that there was conversations involving every purchase of stock which we had. So if I had the statements which Mr. Lyon, I am sure, would be able to secure for me or for us, I would be in a position where I could answer the initial purchases, when and what was said.

Q Well, I will pass on and maybe Mr. Lyon may want to ask you some questions about that later on.

A All right.

Q Did there come a time when he recommended a company called 3i Co./Information Interscience, Inc.?

A 3i Co./Information.

Q 3i Co./Information Interscience, Inc.?

A Yes.

Q When was this?

A The first time he mentioned it was when Four Seasons was going down, just before it stopped trading.

Q Had he recommended Four Seasons to you?

A Oh, I purchased it through him. That's why, as I told you originally, I was interested in the litigation of the Four Seasons.

Q And you have the confirmation slips for those 2,000 shares?

A Yes.

Q Can I have those, please?

A I would like you to keep them because I have little notes on when I sold them and when I purchased them.

Q Okay. We'll have these marked as we go along.

A All right.

MR. WILLIS: The first document that Mr. Felton has produced --

THE WITNESS: Do me a favor --

MR. WILLIS: Off the record.

(Discussion off the record.)

MR. WILLIS: Let's mark as Defendant's Marine Midland Exhibit 3 for identification a confirmation dated July 9, 1970, reflecting the purchase of one thousand shares of 3i; a copy of a confirmation, dated February 1, 1971, reflecting the sale of one thousand shares of 3i; and a handwritten note which Mr. Felton has annexed to the exhibits, making three documents in all. We will mark them as Exhibit 3.

(Confirmation of purchase dated July 9, 1970; copy of confirmation of sale dated February 1, 1971;

and handwritten note annexed thereto, marked collectively Defendant's Midland Marine Exhibit 3 for identification as of this date.)

MR. WILLIS: May we also mark as Marine Midland's Exhibit --

MR. FELTON: By the way, excuse me, sir. Those notes are prepared by me. That's my work product and I don't want that put in as exhibits.

MR. WILLIS: Mr. Felton, they are not going into evidence. They are being marked for identification.

MR. FELTON: No, but they are --

MR. WILLIS: You had asked that they all stay together. If you want to take them off, I don't really care.

MR. FELTON: Fine, I will -- as long as you understand, this is my work product and if you want them marked as exhibits, I have no objection provided we understand that is my work product for purposes of my case.

MR. WILLIS: In any event, we are merely marking them for identification and not for evidence.

MR. FELTON: Just note my objection to their production for anything other than exhibits.

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MR. WILLIS: Let me start to describe it over again.

We will mark as Marine Midland's Exhibit 4 for identification four confirmations, one dated July 9, 1970, reflecting the purchase of five hundred shares of 31; one dated January 13, 1971, reflecting the purchase of one thousand shares of 31 and, finally, a confirmation dated February 9, 1971 reflecting the sale of two thousand shares of 31 together with the handwritten note which Mr. Felton has described as work product.

(Four confirmations marked collectively Defendant's Marine Midland Exhibit 4 for identification as of this date.)

Mr. Felton --

MR. FELTON: I just want to say this: What you mentioned as work product on Exhibit 4, you understand that that is the same on Exhibit 3, work product, the yellow sheet marked for identification.

MR. WILLIS: Yes, Mr. Felton, I understand that all of the confirmations that you have produced here today contain also a little yellow sheet which is, as you described, your work product.

MR. FELTON: Yes.

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A Yes.

Q When was your next purchase?

A May I have the confirmations to refresh my recollection, please?

Q Yes. (Handing.) Perhaps we should mark them all right now and that might facilitate your answers from this point forward.

A Fine. That's capital.

Q All right?

A That's a capital idea.

MR. WILLIS: Let us mark as Defendant's Exhibit 5 for identification --

MR. FELTON: Off the record. I want to make sure you have it in the proper order.

MR. WILLIS: Off the record.

(Discussion off the record.)

MR. WILLIS: A confirmation dated March 2, 1971, reflecting the purchase of five hundred shares of 3i; a confirmation dated March 2, 1971, reflecting the purchase of one thousand one hundred shares of 3i; a confirmation dated March 2, 1971, reflecting the purchase of three hundred shares of 3i; a confirmation dated March 2,1971, reflecting the purchase of one hundred shares of 3i.

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MR. FELTON: Making a total of two thousand shares purchased.

MR. WILLIS: And a confirmation dated March 16, 1971, reflecting the sale of two thousand shares of 31.

MR. FELTON: March 16, '71?

MR. WILLIS: I think that's what I said.

MR. FELTON: Yes.

MR. WILLIS: Together with the handwritten work product note of Mr. Felton.

(Various confirmations marked Defendant's Marine Midland Exhibit 5 for identification as of this date.)

MR. WILLIS: Let us mark as Exhibit 6 for identification a confirmation dated March 2, 1971, reflecting the purchase of two hundred shares of 31; a confirmation dated March 2, 1971 reflecting the purchase of two hundred shares of 31; a confirmation dated March 2, 1971, reflecting the purchase of two hundred shares of 31; a confirmation dated March 2, 1971 reflecting the purchase of two hundred shares of 31; a confirmation dated March 2, 1971, reflecting the purchase of two hundred shares of 31.

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MR. FELTON: Making a total of a thousand shares purchased on March 2, 1971.

MR. WILLIS: A confirmation dated March 22, 1971, reflecting the purchase of two thousand shares of 3i; confirmation dated April 13, 1971, reflecting the sale of one thousand shares of 3i; a confirmation dated June 21, 1971, reflecting the sale of one hundred shares of 3i; a confirmation dated June 21, 1971, reflecting the sale of one hundred shares of 3i; a confirmation dated June 21, 1971, reflecting the sale of one hundred shares of 3i; --

MR. FELTON: Making a total of three hundred shares sold on June 21, 1971.

MR. WILLIS: -- a confirmation dated December 27, 1972, reflecting the sale of seven hundred shares of 3i.

MR. FELTON: What date?

MR. R.W. LYON: '71 or '72?

MR. WILLIS: '71. You are correct; December 27, '71.

MR. FELTON: Yes.

MR. WILLIS: Together with the handwritten work product memorandum of Mr. Felton.

(Various confirmations and handwritten memorandum

marked Defendant's Marine Midland Exhibit 6 for identification as of this date.)

MR. WILLIS: We will mark as Marine Exhibit 7 for identification a confirmation dated June 7, 1971, reflecting the purchase of five hundred shares of 3i; and a confirmation dated June 7, 1971, reflecting the purchase of five hundred shares of 3i.

MR. FELTON: Making a total of one thousand shares purchased on June --- what?

MR. WILLIS: 7.

MR. FELTON: 1971.

MR. WILLIS: Together with Mr. Felton's handwritten work product memorandum.

(Various confirmations and handwritten memorandum marked Defendant's Marine Midland Exhibit 7 for identification as of this date.)

MR. WILLIS: I think this is a good time to break. Why don't we adjourn now until 2:00 o'clock?

MR. WINN: What time are you coming back?

MR. WILLIS: 2:00 o'clock.

MR. FELTON: 2:00 o'clock, fine.

I would like to put this on the record: Why

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can't we really get back at quarter to 2:00 so we can finish and move this along?

MR. WILLIS: I think 2:00 o'clock --

MR. FELTON: You might require me to come back for a half an hour tomorrow.

MR. R.W. LYON: If you have to come back tomorrow, I will make sure I make it worth your while.

MR. KUNEN: Make it tomorrow afternoon.

MR. FELTON: I want to continue.

MR. WILLIS: I don't think we need this discussion on the record.

MR. FELTON: I want to continue straight through. I want this finished.

MR. WILLIS: Off the record.

(Discussion off the record.)

(Whereupon, at 12:55 p.m., the examination was adjourned for luncheon recess.)

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AFTERNOON

SESSION

2:00 P.M.

ROBERT R. FELTON, having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION CONTINUED

BY MR. WILLIS:

Q Mr. Felton, looking at Marine --

A Are you going to ask me about the transactions?

Q Yes.

A Then I think you will have to let me see them to refresh my recollection.

Q If you will let me ask the question, --

A I just --

Q --- it would expedite matters, if you would let me at least get my question out before you interrupt.

A All right.

Q Showing you Marine Exhibits 3 through 7, would you state whether or not these exhibits reflect all of the transactions which you have had in the stock of 31 Company?

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A What are you talking about? What dates?

Q We are up until April, 1971.

A Yes, as a matter of fact, I had.

Q Who was that?

A Well, I discussed it actually with two people.

Q Yes?

A I discussed it with a Martin Falk.

Q Yes?

A A friend of mine.

Q Yes?

A And also, I had discussed it for a moment or two with Daniel Einhorn.

Q Who is Martin Falk?

A One is a friend and the other is an associate -- an associate-friend, so to speak.

Q Well, Mr. Falk is just a friend?

A Yes.

Q Is he in the business world?

A Yes.

Q What business is he in?

A He is a stock broker.

Q Is he with some firm?

A Yes.

Q What firm is he with?

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A Goldman, Sachs.

Q When did you have this discussion with Mr. Falk?

A Well, I want -- as a matter of fact, I had told him about it on several occasions. I was very excited about the stock as you can understand, especially when it started to move. So I told him, "Gee, this is great."

Q You had several discussions with Mr. Falk?

A A number of discussions. He is a friend.

Q What did he tell you about the stock?

A He knew nothing about it.

Q Did he ever look into it?

A Well --

Q Did he ever tell you he had looked into it?

A Prior to April, 1970?

Q Yes.

A I didn't ask him to look into it. I guess I just was talking in the sense that I felt it was a stock which moves, as I said before, from 4 and 3/4 up, and I just mentioned it.

Q And he said he had never heard of it?

A Correct.

Q You say Mr. Daniel Einhorn was a friend and associate?

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A Yes.

Q What relationship do you have with him?

A It is a mere coincidence, but once we were at a basketball game, a Knick's game, and I had mentioned the stock during the intermission and Danny Einhorn said, "You mean Jim Nissan's stock?" This was sometime -- in the winter of '71.

Q Yes.

A This is apparently what -- how the stock was considered by another broker.

Q Is Mr. Einhorn a broker?

A Yes.

Q What firm is he with?

A I don't know.

Q You mentioned that he is a friend and associate -

A I didn't mean that.

Q Are you associated in some way?

A What I did mean was I tried to distinguish between a friend and someone who is just a casual friend. That is what I meant. I don't think I used the word "associate-friend' judiciously. I mean a friend as opposed to an associate, somebody that you associate with.

Q Einhorn is a good friend?

A No, Mr. Falk is a good friend.

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Q And Mr. Einhorn is not as good a friend as Mr. Falk?

A He is just a -- an acquaintance. I tell you all this for a very important reason, and I want to underline this. This is a -- you will hear now a series of coincidences, purely coincidence, which affect the -- my judgment of the stock.

Q Let's start with your conversation with Mr. Einhorn which you said was at the intermission at one of the Knick's games.

A Yes.

Q You mentioned the stock and Mr. Einhorn said, "You mean Jim Nissan's stock?"

A Yes.

Q Would you complete the conversation that you had with Mr. Einhorn?

A Yes. At the time, I didn't believe in mixing business with friendship, and so I never really, aside from just mentioning a stock or two, I never got a stock tip from Mr. Falk, never even told Mr. Falk who my broker was because I felt that wasn't important. As a matter of fact, Mr. Falk in the past had some purchasing of a home, and various things and I told him at that time I didn't want to, really because of the close association,

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really do it because I felt it really wouldn't work out too well. So when Mr. Einhorn said, "Jim Nissan's stock," I made no comment. I just was interested in it and I felt that it was at the time the significant -- significant in the sense that I felt here is Mr. Nissan who deals in special situations and here is a special situation that another broker at another house would know is Mr. Nissan's stock.

Q Have you given us the entire conversation with Mr. Einhorn?

A That's basically it. He said, "I don't know if you want me to find out if this is Jim Nissan's stock. You can call him or I can."

Once again, I am telling you the effect of it.

Q That was the sum and substance?

A The game began.

Q You mentioned some coincidences that arose?

A Yes.

Q What are those?

A I would like to tell it to you in proper order.

Q We haven't gotten to that point in time yet?

A No. You asked me prior to April 22, 1971.

Q That's correct.

A I think in view of the fact that several transactions

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looked at it. If I recall, it might have been four pages or maybe five pages long.

It looked very nice and in the sense that it looked like a very favorable report to me. He was excited with it and he at the time was a stockholder and I was a stockholder.

Q Yes?

A I didn't ask him for a copy of it because I had taken a position in the stock. This so to speak dovetailed with everything that Mr. Nissan had told me. And so I was very comforted by the whole thing.

This is a series of coincidences because approximately a week or two thereafter we were at the beach, at Atlantic Beach.

Q This would have been late in July?

A I don't think so. I really don't recall when. It might very well have been around the middle of July or the first week in July. I just want to say this to you, Mr. Willis: All of this from my point of view and Mr. Falk's point of view was based upon the fact that everything that was there was innocent, that whatever was in that report was correct and what Mr. Nissan said was correct and what Mr. Brodsky said was correct, everyone was correct. And that's why I didn't analyze it and that's

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why I don't remember the dates, and this is what it really was.

I didn't at the time ever tell Mr. Falk, I don't believe, my position in the stock or anything else that was involved except that I was in it.

But a week or two later -- maybe even a weekend later, maybe even the same weekend, I was at the beach with Mr. Falk, Atlantic Beach, one of the Cabana Clubs, and -- Mr. Falk was in a conversation with a younger -- a young man.

Q Yes?

A A friendly conversation, and then he came over to me and he said to me, "By the way, that's the fellow who wrote the report that you bought the stock and I bought the stock."

And I just want to complete the whole story. I never spoke to Mr. Brownstein, but I want you to know one thing: When I started this lawsuit, I didn't even ask Mr. Falk the correct spelling of Mr. Brownstein's name. That's why I originally instituted the lawsuit as Joel Doe, because I was so embarrassed that I'd lost so much money on the stock after I had been bragging about how well it was doing that I never really discussed it with him after that except to the extent that -- of

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just maybe sometime in the fall of '71. So I remember his name. I remembered it was something like Brownstein or Brownstone. I couldn't get the spelling. That's why I started it as Joel Doe.

When I instituted the action, they told me he was still in the employ of the bank.

Q We are getting rather far afield.

A I just thought I would make a statement and tell you exactly what is what as far as coincidences.

Q I'm not interested in your statement. Let's get back to the beach.

Did you and Mr. Falk have any discussion about the stock at the beach other than his referring to him as Mr. Brownstein, the man who wrote the report?

A I was interested in the stock and he was. He had met this fellow. What happens at the beach, the beach is approximately several miles long and there are various clubs there as well as open to members of the Atlantic Beach Estates Community. So people have a tendency on Saturday and Sunday to walk from one place to another and say hello. So that's what I assumed it was. He never introduced me to Mr. Brownstein. That's the other coincidence.

Q You didn't purchase any 3i stock after receiving

A By the way, everything that I said so far in any conversations are just paraphrasing of what I recall at this particular moment now.

Q Well, I want in each case your best recollection of the conversations.

A This is my best recollection, but not the conversation as much as the paraphrasing in my own words right now.

Q If you can recall precisely what you or what he said ---

A I can't,

Q With respect to any of these conversations, I want that.

A I understand, but I just want to make this understood because basically speaking this is -- a lot of conversations where I have -- this is what I -- in each instance my recollection.

Q Did he --

A In my words, both sides of the conversation, which is my recollection.

Q Did he advise you to sell that day?

A At that point, I don't believe -- I don't believe I was in any mood to take advice on this particular stock, at that particular point.

Q What did you do after this particular

conversation on that Monday on which the stock fell to 6 or 7?

A I went out and had a few martinis.

Q Did you talk to anybody about the stock or make any investigation as to what had happened?

A No. I assumed that -- what he had said to me was that the stock was -- the earnings weren't as good as he thought and so -- that was leading up to it when he was telling me that Brodsky was out of town about the earnings, and I assumed that was the reason for it.

Q What did you do next about 3i?

A On December 27, 1971, I sold another seven hundred shares. I sold them for 7 and 5/8.

Q Did you do that through Mr. Nissan?

A Yes.

Q Had you had any conversations with him about 3i up to the --

A I had a few conversations, yes. One of the things that he had said to me was -- I don't recall exactly when this was but -- maybe it might have been after December 27, but he told me about the fact Mr. Brodsky was leaving the firm, was leaving 3i. I don't recall the date of that.

Q Yes?

A He also told me they were contemplating changing the

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name of the company.

He also told me somewhere along the line, I don't recall where, that the bank lent a considerable amount of money to 3i to help them out.

Q Which bank did he say had loaned money?

A I assume it was the same bank that he was referring to, the Marine Bank, which as I say, he hadn't used the name.

Q I don't want your assumptions.

A I am answering the best of my recollection.

Q He didn't mention what bank it was?

A Something to the effect, "What about the stockholders of the bank that was buying the stock?"

Q You asked him that?

A Yes, something like that.

Q And what did he say?

A He said, -- you see, what he basically --"this was an earnings situation that caused the drop in the end of -- after the drop in '71."

And so when he was talking in terms of changing the image, I mean the name as opposed to changing the image and the president leaving and the bank lending the money, which even though he never mentioned the name of the bank, was the bank that was -- we both understood

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it was the bank that had written up the favorable report.

Q But you and he had never mentioned the name of that bank in your conversations?

A No, I never discussed the bank with him until the time that I asked him what happened in --"What happened to the bank? Did they get out their customers?" And he didn't answer that really. What he said was, "They lent a considerable amount of money." When I say "considerable," it might not have been considerable, but they lent money. Maybe the word "considerably" is my reading into the statement. I know he did say they lent money.

Q Have you given us all the conversations that you remember with Mr. Nissan up to December, 1971?

A Yes.

Q Then in December, you had a further transaction?

A Yes, I sold seven hundred shares.

Q Which reduced your holdings to two thousand shares?

A The sale was at a loss but because of the fact that I had fortunately made some money, I believe, in some other transactions, that was the purpose of that

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sale.

Q The purpose of the sale was to establish a loss for tax purposes?

A Yes, but not certainly to sell the stock at 7 and 5/8 when I had purchased it as high as $20.

Q In December of 1971, was Mr. Nissan continuing to suggest that the stock had potential and that you should stay in the stock?

A I don't recall.

Q You don't recall what he was advising you at the end of 1971?

A No, because -- the price of the stock was so low that I don't think I even asked him about it because I was locked in for all purposes with a loss of thousands and thousands of dollars here. So I certainly was not in a position at that time to move.

Q What did you do about 31 after December, 1971? Did you have further talks with Mr. Nissan?

A Yes.

Q What further talks did you have with him?

A I don't really recall too many talks because the stock really was doing very poorly. It kept going down, and I just felt that the people had lost money on the stock and had lost interest in the stock and it was the kind of

stock that I said, "Oh, well, this is a millstone around my neck and I have to live with it, and hopefully someday," remembering his words that he said they are going to change the name of it and the president left, I thought perhaps there might be renewed interest and the -- or it might turn around. So I just kept it. As a matter of fact, I have kept it until today.

Q Did you continue to have dealings in other securities with Mr. Nissan?

A Yes.

Q And --

A As a matter of fact, because of these dealings, I had a very important conversation with him which brings us really up to the present which is more than the casual talk about, "Gee, look how bad it is," and that kind of stuff which had gone along as part of the downward course of the stock.

Q When did that conversation take place?

A Sometime in 1973.

Q Approximately when?

A Approximately the beginning of February, sometime in the first two weeks of February, 1973.

Q What did he say to you?

A What happened was that I had received a couple of

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margin calls along the way from some other stock. You had mentioned before Equity Funding in our conversation, and I just thought I would mention that Equity Funding was doing very poorly.

Q Yes?

A And there were several margin calls. And one particular margin call before I sent in the money, the margin call was, "Either send in the money or we will sell you out."

And I called him up and said, "Let's go over the situation and see if I can sell any of the stock because you know I don't want to be adding any more money to the account."

So we went over a few of the stocks and I asked him about 3i.

Q Yes?

A And he said something to the effect of, "I can't talk to you about the stock any more. I can't tell you whether to buy it." What I asked him was, "Should I buy it? Should I buy more and average down or should I sell so I don't have to give you the money or should I just hold it?"

And he said, "I can't discuss it with you any more." And he said to me, "We don't make a market in any more,"

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something to that effect.

So what he said to me was -- and this has to be read in content of another coincidence which I will tell you in a moment -- but when he said about, "I can't discuss it with you anymore," and "They don't make a market in anymore," and -- and then either that day or a few days later, I asked him something about the Equity Funding which was acting also very poor. This was before they stopped trading in it. He said something to the effect that he was in touch with -- excuse me a moment, I want to refresh my recollection. I don't have any paper, but I think the name is -- with Goldblum, who at the time, I think his name was Goldblum, was at the time the head of Equity Funding.

Something in my head rang "Goldblum, Brodsky," and I decided at that point that perhaps -- other factors had caused the stock to -- the price to disintegrate.

Q I don't understand the thing you said.

A Repeat it, please.

Q You said a few days after this early February, 1973 conversation --

A Don't paraphrase it.

Q Let me ask the question. You said a few days after your conversation in early February, 1973,

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you had a further conversation about Equity Funding, and the name Goldblum was mentioned?

A I think that's the name.

Q Whatever the name was.

A Yes.

Q And then you connected that to Brodsky. What is the connection between Equity Funding's Mr. Goldblum, or whatever his name is, and Mr. Brodsky?

A I believe that this man was the president of Equity Funding.

Q Mr. Brodsky or Mr. Goldblum?

A Mr. Goldblum.

Q What is the connection?

A The connection was suddenly I realized that here is a stock that traded as high as -- Equity Funding, I don't know, in the 40's, and suddenly was really doing very poorly. And I believe also Mr. Nissan said something to the effect that he, somewhere along the line with Equity Funding, that he had somewhere in the neighborhood of a quarter of a million shares or some huge amount like that. And when he mentioned the fact -- I said, "What's happening to Equity Funding," and he said that he was in touch with Goldblum and the figures looked all right. And suddenly it was like deja veu, like thoughts recurring,

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here he was talking to Brodsky before and then he said he was out of town before the earnings came lower. And I decided at that point perhaps, that further -- that there was something here that was perhaps the reason for the demise of the stock price-wise from the middle 20's down to, I really don't know at that point what the stock was, but it certainly was considerably under $5.

Q Really, you had a hunch that something might be wrong with 3i? Isn't that what you are saying?

A Not a question of a hunch really. Suddenly things crystalized in my mind and I decided at that point that -- things didn't happen here just by coincidence. And -- I sat and I thought about it, reflected for a while.

Q Yes?

A And I realized that what I was dealing with here was not just a -- not just a -- earnings situation, that perhaps what we had here was insiders with access to the company, the 3i, by Mr. Nissan, by Walston making a market, by Mr. Brownstein in his conversations with -- I assumed -- just my belief -- with Mr. Nissan and Mr. -- and certainly with --

Q I don't want your assumptions. You know none of this is evidence. This is just argument.

A I know. You are asking me what -- you are asking me

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what the conversation with Mr. Nissan was and I told you something to the effect that he said he couldn't discuss the stock any more with me.

Q Did you ask him why he couldn't discuss it?

A He said one of the reasons was that he was a principal in the company.

Q Yes?

A If he didn't use the term "principal," an investor.

Q Did he give you any other reasons why he couldn't discuss it with you?

A Well, I thought it was sort of tied up with the fact that they weren't making a market in the stoc.. and that in itself right there, I couldn't understand why --

Q I don't really want your understanding. The answer is, he didn't give you any other reasons?

A I don't believe so.

Q Did you do anything to check up on this? This is in February and you were concerned about the stock. Mr. Nissan wouldn't talk to you about it. What did you do then?

A What did I do?

Q Yes.

A Well, for about a month, I was beleaguered by Equity Funding margin calls. So I didn't do too much. But

somewhere along the line, I started acquainting myself with security fraud laws and decided that I was going to start a lawsuit here in view of the fact that every day I became surer that there was a conspiracy here to leak the news, to drive the price of the stock up and to ensnare a lot of innocent people.

Q Would you tell us what records or what information you relied upon in drafting the complaint in this case?

A The original complaint?

Q The amended complaint.

A Well, what I did was I spent countless hours in the SEC, the Securities and Exchange Commission, down across the street from the Federal Court in Foley Square, and I also traveled to Washington, D. C., to the main office of the Securities and Exchange Commission to make sure that I had a complete file.

Q The first thing you did was get a complete file --

A No, I didn't get a complete file at all.

Q What did you get?

A I read.

Q You just read the file?

A This is what I did, sir. There are viewers in the SEC.

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I spent hours using the viewer, reading various reports.

Q Yes?

A What I then did was I selected those portions of the reports that were for my information, and I proceeded to photostat them.

Q These would be copies of published --

A Yes.

Q -- SEC filings?

A Correct.

Q What other documents did you use in preparing the allegations of your complaint, your amended complaint?

A That's basically the only public records -- the only records that I used.

Q No other records at all were used; is that correct?

A No, except that -- yes, that's correct.

Q All right. Then is it correct that all of the allegations in the amended complaint are based upon published material --

A No.

Q -- that you found in the files of the SEC?

A No, no.

Q What other information did you use in drafting the complaint?

A Based on all the conversations that I had with Mr. Nissan, --

Q Yes?

A -- the coincidences with Mr. Falk, with Mr. Einhorn, the Marine Midland analysis report which I saw.

Q But didn't have?

A Didn't have?

Q That's right.

A I don't know what you mean by "have."

Q You didn't have it in hand when you drafted the complaint, did you?

A No.

Q You haven't seen it since that day in your backyard in July 1971, have you?

A No.

Q Any other documents that you used in drafting your amended complaint?

A No.

Q What documents did you use in drafting the original complaint?

A Conversations with Mr. Nissan, the report that I saw, the Marine Midland report, the coincidences in connection -- the connection between Mr. Brownstein, Mr. Nissan -- I mean Mr. Brownstein and Mr. Falk.

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Q Yes?

A The coincidence with Mr. Falk, the coincidence with Mr. Einhorn, the statements by Mr. Nissan as to his conversations with Mr. Brodsky, the conversations with Mr. Nissan regarding the facts of the bank lending money to the company, the statements about Mr. -- Mr. Nissan regarding the fact that a major bank is putting out a favorable report and that they are going to buy a lot of stock for their customers coupled with what Mr. Falk coincidentally told me, the fact that Mr. Brodsky was leaving 3i, the fact that 3i, Mr. Nissan said -- no, was leaving -- left 3i and the fact that Mr. Nissan told me that they are -- 3i is going to change its name and image, something to that effect, certainly going to change its name.

These are all the things that gave me the information to draft the original complaint. That, by the way, didn't have the completeness of allegations that met your requirements and the requirement of the Court, and so led me to the detailed information which I was assuming that I would get from you in discovery and inspection during the summer of '73, which I got mainly from the 1972 10K report of 3i Company, which among other things showed that these multi-million-dollar acquisitions which were -- done in 1971 were written off as worthless in '72

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on the 10K report as well as this one-million-dollar data bank, also written off as worthless in 1972, plus the fact that the Excerpta Medica Foundation suddenly didn't have stock in the amount of 46,666 shares but had stock rights, which apparently they never had exercised, plus the fact that there was $150,000 which was supposedly owing to Mr. Fred Von Eugen, which is his balance owing to him which suddenly was converted into 30,000 shares repurchaseable at $5, and on the 1972 10K suddenly found itself as also being stock rights concealed in excess of 85,000 shares of 31 Company.

Q We will be coming to this, Mr. Felton, and certainly you will have an opportunity to tell us all you found out from reading the SEC file.

A Yes.

Q In order that I am clear, in drafting your original complaint, you relied upon various conversations with Mr. Nissan?

A I relied on what I said I relied on. I am not going to repeat it again. Let the record stand by itself.

Q Various conversations with Mr. Nissan, with Mr. Falk and Mr. Einhorn, your view of the Marine Midland report, but that you had not yet looked at the SEC public filings?

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A No.

Q And that after the judge had directed an amended complaint be filed, you then looked at the SEC filings?

A Yes.

Q And added that to your store of knowledge and based the amended complaint on the sum total of what you found on the public file plus your recollection of your conversation?

A Just so the record should be correct, the complaint, the original complaint that was drafted by me, I drafted it in a general way. I had planned to go to the SEC but I felt this would be part of my discovery and inspection proceedings.

As a matter of fact, I requested as part of my discovery and inspection of 3i Company to give me all reports that they had filed with the SEC.

I had served the original complaint alleging the -- with the allegations on the basis of a general statement. You asked for specifics and I gave it to you. I was planning to give you the specifics along the way but I thought specifics would be partly filled in by the discovery which I had requested of you which the Court delayed until such time as the amended complaint was served.

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Q I am not trying to be critical.

A I can't be.

Q I am merely trying to pin down precisely what information you have relied upon in drafting your two complaints.

Have you now indicated for us all of the information on which you relied in drafting those two complaints?

A Yes.

Q And no other documents?

A No, except as I say, if you recall, I had previously testified that Mr. Nissan had sent me another copy or a copy, rather, of the 1970 annual report of 31.

Q Did you have that when you drafted the complaint?

A No, but I had it in my memory, in my mind, and I recall the conversation when he talked about the European data bank and I had recalled seeing that on the balance sheet.

Q All right.

MR. WILLIS: May we mark as Defendant's Marine Midland Exhibit 8 for identification a copy of a report entitled "31 Company/Information Interscience, Inc.," dated May 17, 1971?

(Copy of report entitled "31 Company/Information Interscience, Inc.," dated May 17, 1971, marked

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Defendant's Marine Midland Exhibit 8 for identification as of this date.)

MR. KUNEN: Shall we take a few minutes?

MR. WILLIS: Fine.

(Whereupon, there was a short recess taken and the deposition resumed.)

EXAMINATION CONTINUED

BY MR. WILLIS:

Q All right.

A By the way, I want to tell you this if I can. I am not talking from notes as to the dates of conversations. This is all my recollection based upon just sitting here and just talking to you, and the only reference that I really made was to the confirmation sheets that I had.

So, subject to perhaps my memory being vague or perhaps, this is just sitting here, October 9, 1973, basically what I recall.

Q Do you have any diaries or records which would help you pin down these conversations more precisely?

A No, I may not. I may tomorrow forget one of these conversations. This is what comes to me at this particular moment talking to you and bringing back some of the pleasant memories, pleasant first and exciting and then unpleasant memories toward the latter part of '71.

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If I felt at the time there was a need to have a diary, I wouldn't have been investing in this particular stock. And the reason I am mentioning this is because of the fact that I see Mr. Lyon is making very copious notes of the conversations.

MR. FELTON: And I say this, since you requested that we adjourn at 4:00 o'clock today, I would like to continue of course until 5:00. But to have some continuity in my testimony, that is in judging the fact that Judge Bonsal has ordered that we complete the examination before I continue my discovery, I am certainly available at your disposal until 5:00 o'clock. And my day is a 9:00 to 5:00 day and we started at 10:30 because we had to wait for one of the attorneys from Shea, Gould's office. So we got a late start and we had an hour and a quarter for lunch. And I am requesting at this time to stay until 5:00 o'clock so we can move it along.

And I think in all fairness to your request that you want completion, I think you should be willing to continue to 5:00 o'clock so we could continue and make a complete day in view of the fact that we started so late and wanted so much

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time for lunch.

MR. R.W. LYON: For my own part, I just want to note for the record that Mr. Willis indicated this morning that the deposition would be closing for the day at 4:00 o'clock and when I went back over the noon hour, I made arrangements to do certain things between 4:00 and 5:30.

MR. FELTON: I had requested 5:00 before that. I want to tell you this, I stated I only wanted a half an hour for lunch and you insisted on an hour and a quarter for lunch. I want to get this thing finished so we can move ahead. I certainly don't want to take any more time than necessary.

MR. WILLIS: Let's continue.

MR. FELTON: I am prepared to stay until 5:00.

MR. WILLIS: We agreed earlier this morning that we would conclude at 4:00. I told you that we would even defer to conclude tomorrow.

Your concern was that Mr. Brownstein's deposition would be somehow delayed and we now know it will not be delayed. It seems to me you are getting your way in this matter ...

MR. FELTON: My way?

MR. WILLIS: Yes.

MR. FELTON: This was your way, sir, that -- Mr. Brownstein should follow me.

MR. KUNEN: As an innocent observer, he is wasting a lot of time with all these speeches.

MR. FELTON: I want to stay until 5:00 o'clock. That is what my whole purpose is.

MR. WILLIS: We have all planned to adjourn at 4:00 and we will even defer to do so. But let's move along.

BY MR. WILLIS:

Q Would you look at Defendant's Exhibit 8 for identification, Mr. Felton, and tell me if that is the Marine Midland report that Mr. Falk showed you in your backyard in July of 1971?

A You just handed it to me a few minutes ago and I would like to look it over and maybe I will give you an answer on it tomorrow.

Q Do you have some doubts at this moment about it?

A I have no doubts at all. It's just that I feel that in all fairness to the truth, or to my recollection of what it is, I think that I should have a chance to look it over and spend as much time in looking at it so I can give you a considered answer.

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MR. FELTON: Let me ask you this question, sir, --

MR. WILLIS: Mr. Felton, the bulk of the remainder of my examination would be with respect to matters set forth in this report.

Would you rather we adjourn now and that you can look at this carefully overnight and we can expedite it quickly by going through it tomorrow?

MR. FELTON: May I ask you this question, sir: Do you have any other reports that you can show me that I can consider at the same time as this?

MR. WILLIS: I have no other reports to consider to show you at this time.

MR. FELTON: Are you -- is there some reason why you are saying "at this time"?

MR. WILLIS: That was the question you asked me.

MR. FELTON: No, my question is: Do you have any other reports other than this report from Mr. Brownstein?

MR. WILLIS: This is not my examination, Mr. Felton. It is your examination.

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MR. FELTON: Are you suggesting --

Q If you have some doubts about it and you are not sure that this is the report, say so.

A I just want to think about it.

MR. FELTON: But I am asking you now, at this point, to say to you in all fairness to my testimony and to the truth, and if I do represent the class, was there any other report other than the one of May 17, 1971 that you have in your possession?

MR. WILLIS: I am not disclosing any further information with respect to this at this time. You will get your discovery, and I am merely asking you with respect to this document, is it the one that you looked at in the backyard of your home in July of 1971?

MR. FELTON: I say this, in view of the fact that you will not disclose to me at this time if there is another report available to you or in your possession, I will accept your suggestion that we continue tomorrow, and after a chance to look this over.

MR. WILLIS: Let's adjourn now until 10:00 o'clock tomorrow morning.

MR. FELTON: Fine.

(Whereupon, at 3:45 p.m., the deposition was adjourned as set forth above.)

Robert R. Felton

Robert R. Felton

Subscribed and sworn to before me this 7th day of February, 1974

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7672650
Qualified in Nassau County
Term Expires March 30, 1974

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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, BERNARD JACOBS, Notary Public of the State of New York, do hereby certify that the foregoing deposition of ROBERT R. FELTON was taken before me on the 9th day of October, 1973.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed. The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

In witness whereof, I have hereunto set my hand and seal of office at the County and State of New York, this 23rd day of October, 1973.

Bernard Jacobs

Bernard Jacobs

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK - NEW YORK, JOEL BROMSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, EXCERPTA MEDICA FOUNDATION, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., IFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (IFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. LIM KESSLER and GERALDINE KESSLER,

Defendants.

----------X

CONTINUED DEPOSITION of ROBERT R. FELTON, taken before Isadora S. Borak, C.S.R., a Notary Public of the State of New York, held at the offices of Sullivan & Cromwell, Esqs., 48 Wall Street, New York, New York, on the 10th day of October, 1973 at 10:00 A.M., pursuant to adjournment.

BORAK REPORTING SERVICE, P.C.
150 Nassau Street
New York, New York 10038

WOrth 2-5057

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ROBERT R. FELTON, having previously been duly sworn, resumed the stand, was examined and testified further as follows:

EXAMINATION

BY MR. WILLIS:

Q Mr. Felton, there was a question pending from our session yesterday afternoon which was, as I recall, would you look at Defendants' Exhibit 8 for identification and tell me whether or not that is the memorandum which Mr. Falk showed to you in your backyard sometime in July of 1971.

A As I indicated to you, I could not be completely sure and thinking about it, I can't be completely sure now. It would appear to be the same one.

I notice there is some print, "File Copy, Do Not Remove From Investment Research Department." This I am pretty sure was not on my copy that I was shown, this particular stamp.

Basically, I looked it over and to my best recollection, this is substantially what I saw. When I say substantially, this is substantially comparable or similar.

Do you recall the content of my previous statement, I didn't really spend that much time

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looking at it when I was shown it.

Q How much time did you spend looking at it?

A I don't recall. I am sure if it was anything, it was under ten minutes.

Q Did you read it word for word?

A No. I scanned it. In fact, to be perfectly frank with you, I haven't read it word for word since you gave it to me. I frankly did not have time last evening, I had some appointments.

But as I said, this apparently looks similar, if not the same.

I just want to say this, that basically, the last paragraph of this report where it referred to the fact "Buy" was something that I recall when I saw the report.

Q In your complaint you charge that a certain report prepared by Mr. Brownstein was misleading in various respects.

Is Exhibit 8 the report which you are challenging in your amended complaint to be in any way false and misleading?

A Yes. It is my opinion. Would you like to know why? Or would you like me to tell it to you at some future time after we have a chance for Mr. Brownstein to testify?

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Q Let me ask you, Mr. Felton, would you look at the first page of Exhibit 8.

A Yes?

Q Is there any false or misleading statement set forth on Exhibit 8, Page 1?

I take it you are looking at some papers that you brought with you, Mr. Felton?

A Yes.

Q I think any documents that you are going to make use of in the examination ought to be marked for identification.

A Of course. These that I am looking at, sir, are some of the pages which were photostatted by me at the SEC in New York and Washington.

Q I assume you will produce all of those to us now and we will have them marked if you are going to refer to them.

A All of them?

Q Anything you refer to.

A It is so hard to control, sir. Anything I refer to, yes. I am holding now something that weighs in the neighborhood of several pounds or at least a couple of pounds. I am looking at the top sheet, for example, and I see something right here. I am not

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a line-by-line basis.

You just asked me a question last evening regarding whether this was similar to or the same as the one I saw. But in view of what you said, I think perhaps we can begin talking about the first line.

Now, let's look at the first line of this report marked Defendants' Exhibit 8 for identification, earnings for 1970, 25¢.

I would like to have this marked as Plaintiff's Exhibit 1 for identification.

Q You can mark your exhibits when it comes time for you to question yourself.

But is this a document that you are using for the purpose of refreshing your recollection in answering the question that I put to you?

A Yes.

MR. WILLIS: Then let me mark it as Defendants' Exhibit 9 for identification which appears to be a photocopy of a document, part of some larger document, apparently, bearing an accountant's report of Main Lafrentz and Co., dated November 20, 1970.

MR. FELTON: I think, sir, that that is part of the annual report for 1970 of the 3i Company.

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(Document above described was marked as Defendants' Exhibit 9 for identification, this date.)

A Will you hold it a moment, sir, so I can point out to you what I am referring to?

Q What I want, Mr. Felton, is an answer to my question --

A I am going to give you an answer to your question in my way, sir.

The earnings for 1970 showed a net loss of $0.34 a share, not the $0.25 that appears on the top line under 1970.

Now, there is a breakdown in the annual report of $0.25 on continuing operation and $0.09 from loss from discontinued operation. I say that is misleading because the bottom line of the annual report for the year, fiscal year ended June 30, 1970, was $0.34 as it appears on Defendants' Exhibit 9 marked for identification, not $0.25.

Q What other errors or false and misleading statements are set forth on Page 1 of Exhibit 8?

A The 1971 estimate and the 1972 euphoric estimate of $1.

Q What other errors or omissions are on

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Exhibit 8, Page 1?

A Page 1 -- at this time, regarding "Introduction," "Information Industry" and "Description of Business" on Page 1, I am not in a position to answer with the exception of one other thing that I note on the top line, after the $0.25 earnings indicated for -- a loss, rather, and the estimate of $0.40 and $1 as I indicated, estimates for 1971, '72. The P/E, '71 P/E ratio, 32.5x, this would appear to be the price earnings ratio which is, I understand, what relationship there is between the earnings of the stock and the price of the stock at the open market.

And in view of the fact that on the same line, all the way on the left, there is an indication, recent price, $13, 13 -- apparently $13. At 32.5 it appears to be what the stock was selling for, $13 recent price, which is the date of the report, May 17, '71, that the $13 represents 32.5 or thirty-two and a half times the earnings of the stock, the current earnings of the stock.

Now, there is an X next to it. I don't know what the X means. There is no explanation for it. But it seems to me the '71 P/E ratio , at the time this report was prepared, May 17, '71, considering

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the fact that this is a recent price, should have been zero, not thirty-two and a half or 32.5.

The whole line is a line that is misleading, with the exception of recent price and the price range.

There are two asterisks below that indicating the bid price in the OTC market and the fiscal year ends June 30, '70, but there is no description of the X other than the statement that the P/E ratio for '71 is 32.5.

Someone looking at this and reading it, just that alone, this particular line, it is a very, very misleading line, grossly so.

Q Are there any other false or misleading statements on Page 1 of Exhibit 8?

A As I said, there is information on the company that I am not in a position at this time to make a comment on.

Q Are you able to point to any other sentences on Page 1 which are false and misleading?

A As I say, at this time, no.

Q Can we turn to Page 2 of Exhibit 8.

Are there any statements on Page 2 which are false and misleading?

A Just looking at this quickly, it is my recollection that the Excerpta Medica Information Systems, Inc. never really functioned. As I say, this is subject to my recollection. I am not at this time prepared to say this for sure.

But my recollection was that this was never ever a functioning corporation.

Q What paragraph are you referring to?

A This is under Paragraph 6.

Q In Paragraph 6 there is a reference --

A The last line, the last sentence, rather, "Through a wholly owned subsidiary (Excerpta Medica Information Systems, Inc.), 3i provides this exclusive service all over the world."

I do not believe, firstly -- well, this is a misleading statement, not a false statement, in the sense that I don't even know it provides it. I don't think it ever provided it because I don't think it was ever in operation and if it was in operation I am not sure but I would have to refer to the terms of the agreement, but I don't think the agreement permitted this subsidiary to market their services throughout the world.

I thought Excerpta Medica provided 3i Company

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with the information for the United States.

So now, it seems to me, this is misleading and I think that since the Excerpta Medica Foundation data bank was really not operating, this should have been stated or at least there should have been some qualification for this, for this euphoric statement.

Q You conclude that the last sentence of Paragraph 6 on Page 2 is incomplete and further information should have been given with respect to that?

A Yes. Correct.

Q When was the first time that you ever heard of the Excerpta Medica Foundation?

A The first time I heard of Excerpta Medica Foundation was when Nissan told me about it and he referred to it as a European data bank.

Q You didn't testify about Excerpta Medica Foundation yesterday in your recounting conversations with Mr. Nissan.

A My record stands on its own, but I just say this, that sometime before Mr. Nissan sent me the annual report for the year 1970, he mentioned to me about the fact that they had purchased a large European data bank and I believe that is the reason why he

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sent me the report, because he said rather than explain it, I will send it to you.

And if you recall, I mentioned the fact that there was an asset on the balance sheet for the annual year 1970 which was approximately 62% of the total assets, which I saw when the report was sent to me, so if I didn't mention Excerpta Medica, that was because -- well, I assumed you knew when I said a European data bank that that is what he was referring to.

Q What other sentences, if any, are there on Page 2 of Exhibit 8 which are false and misleading?

A And/or misleading?

Q False or misleading.

A I said I just wanted to qualify your question. You are saying false or misleading now, sir?

Q I believe I have been saying that all along.

A I thought you said and.

In Page 2 with the exception of what my eye just caught, the last sentence in Paragraph 6, is a continuation of the description of the 3i business. And I am not in a position to comment at this time as to any of the details because this would require a very careful reading of the 1970 annual report as well as the 10-K for the years 1969, 1970 and '71., to comment

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on statements here regarding the number of items, for example, in the Physics Data Bank, the Chemical Data Bank, I don't know.

But I just know this, that the facts are here, that I am not in a position to comment at this time. But that would not make a difference to me, sir. Except for the fact that it looks so good as it appears here, it would make no difference to me, as such.

The difference was to me as an unsophisticated investor was, as I pointed out to you, on the top line on Page 1.

However, if you want me to spend some time on this and write you a note on Page 2 --

Q I do not want any note, Mr. Felton. I really want at this moment for you to tell me if there are any other false or misleading statements on Page 2 of Exhibit 8.

If you do not know of any other, I think you can say so.

A I do not see any at this time.

Q Let's turn to Page 3 of Exhibit 8.

Are there any false or misleading statements on Page 3 of Exhibit 8?

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MR. FELTON: Off the record.

(Discussion off the record.)

A Once again, this is detailed information regarding various operations and subsidiaries and I have no comment at this time.

Q Is there any sentence on Page 3 of Exhibit 8 which you claim to be false or misleading?

A At this time I see no sentence on Page 3 that is false or misleading, because I do not have at my disposal any of the information that can either substantiate or detract from any of the statements that are contained on Page 3.

So I reserve any statements to such items -- I don't reserve, I just don't, at this time, I do not have the expertise to make a comment or to find anything false or misleading on Page 3.

Q Is there any statement on Page 4 of Exhibit 8 which is false or misleading?

A Page 4 also contains specific information. I do not have the expertise to answer your question, with the exception of the last paragraph. "Through Excerpta Medica, BI began selling its services in Europe during the past two months. While it is almost impossible to place parameters on the size of the

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foreign market, the company estimates it to be substantial."

My understanding is that the use of Excerpta Medica data banks was exclusively for the United States.

Q Other than the first sentence of the last paragraph on Page 4 --

A But I say that I am not sure of it. As far as I am concerned, it may very well be true, and as a matter of fact what I am doing now, it is the first time I saw this particular paragraph, as well as the paragraph regarding Excerpta Medica -- no, no. This paragraph.

So, I don't know. I would have to refer to 1972 10-K for any specific answer.

Q Please take all the time that you need.

But is there any other sentence, other than your qualified answer with respect to the first paragraph, the last paragraph, first sentence, which you claim now to be false or misleading?

A I do not have the expertise to make any statements without a detailed study of all the 10-K's that were filed by SI in view of the fact that the information that is contained on Page 4 -- and by the way, some of this information would not be on the 10-K;

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for example, in one of the paragraphs they refer to industry and government organizations that make use of 3i services.

I am sure that information is only available at the 3i offices in their own records.

Q But my question is a very much limited one. And that is, are you now able to point to any other sentence on Page 4 which you claim to be false or misleading?

A At this time, no.

Q Let's look at Page 5 of Exhibit 8.

Is there any sentence on Page 5 which you claim to be false or misleading?

A Let's look at the first paragraph, under Financial. "For the year ended June 30, 1973" -- I am reading now from this first paragraph -- "3i had net revenues of $1.4 million and a loss from continuing operations of $406,000 or $0.25 a share. A non-recurring loss of $149,000 stemmed from the sale of Systan, a discontinued operation."

In the first sentence, there is mention of $0.25 a share. So the average person reading this, this would appear that the $149,000 was computed in that $0.25 a share, especially going back to the first page,

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$0.25 a share.

Q Are you saying that that first paragraph is false or is it misleading?

A Misleading. Not false.

Q And would you explain again why it is misleading?

A There should have been an overall summary of the total loss per share for the year 1970 but there wasn't. All that is mentioned here is $0.25 a share.

Q Are there any other statements on Page 5 of Exhibit 8 which you claim are false or misleading?

A I am sorry.

MR. FELTON: Off the record.

(Discussion off the record.)

A I would like to put this on the record. I am sorry, I put some checkmarks on Defendants' Exhibit 8 marked for identification.

Have I your permission to erase it?

Q Please do.

A I thought I was using for reference the other copy you were kind enough to give me. I just want to point out --

Q This is in response to my question?

A Yes. I just want to point out that what I am

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doing now in picking out all the points is the closest reading that I have done on this particular report since the first time I ever saw it and it is in response to your page-by-page, line-by-line questioning, and I am just saying this is a proceeding that has been going on and I am referring to -- I have referred, I should say, to one of the exhibits that I had with me which is marked Exhibit 9, and also since your question is current today I am drawing on whatever information I have, that I have since learned.

Q The pending question is, are there any other sentences --

A I understand that. I am going to continue now. Please.

I am not in a position to comment on the second paragraph now as to the non-recurring loss in the recent sale of Trenton-Nassau, because I don't know if there were any semi-annual figures recorded by 3i for the year 1971.

Q As of now, do you know of any false or misleading statement in the second paragraph?

A I say I don't know. Now, I would like to refer at this time to the fourth paragraph, however.

"The company has also extended to July, 1972

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the right to begin repurchasing its shares at fixed prices originally sold to Excerpta Medica in exchange for the exclusive right to Excerpta's data bank."

Q Is that statement false or misleading?

A Yes. Both.

Q Are there any other statements in the fourth paragraph which are false or misleading?

A Do you want to know why?

Q I will ask you later, if I am interested.

A Fine. One way or the other, I will be testifying about it.

Now, let's look at the second sentence in this paragraph. "The $1 million paid for this agreement will be written off over a 40-year period."

Q That sentence is false and misleading?

A Yes.

Q Are there any other sentences in the fourth paragraph which are false and misleading?

A The third sentence. I don't say the third sentence is false. I say it is misleading. Let me read you the sentence which I say is misleading.

Q All right.

A "The company's auditors are in the process of

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finalizing this new arrangement which includes worldwide rights for Excerpta Medica's services except in Holland."

Q That sentence you stated is misleading?

A Yes.

Q To summarize, the fourth paragraph, which consists of three sentences, the first two sentences you claim to be false and the third sentence is misleading?

A False and misleading.

Q False and misleading, and the third sentence is misleading?

A Yes.

Q In what respects are those three sentences false or misleading?

A The company, and I assume it is 3i because this is what this report is about, "has also extended to July, 1972 the right to begin..." whose right? The company's right?

I say this; that this whole paragraph, all three sentences, must be read together in this way. No mention is made in this paragraph to the fact that there was stock given, if stock was given, for this data bank purchase or

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$1 million was not paid. No mention was made of the fact that there was a business broker, one Fred Von Eugen, who received $150,000 and should have received the other $150,000.

And, by the way, I don't believe, subject to further discovery on my part, that 3i ever set up a liability on its books for the $150,000 in September of '69 when this agreement was made between Von Eugen and 3i Company.

You see, originally this entire agreement as contemplated by the parties was 46,666 shares plus to Excerpta Medica. That is plus $300,000 to Von Eugen.

I assume the million dollars was arrived at because the agreement provided for the right, and I once again use the term "right" in quotation marks to Excerpta Medica Foundation to have the stock repurchased by 3i at some future date for $13.

Meanwhile, this was lettered stock contemplated by the parties. No mention was made in this report of the fact that this was not payment, a million dollars paid, but this was lettered stock which, by the way, and since you are asking for it now, on the 1972 10-K, my reading and my understanding was that this wasn't stock but this

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that vanished.

Now, I don't even know if the stock was ever delivered to Excerpta Medica. But I do know that $1,000,000 was not paid.

In essence, what was paid was $150,000 given to Fred Von Eugen plus 7,500 shares given to Fred Von Eugen in exchange for his stock rights to 30,000 shares which were 30,000 shares which were given to him subsequent to the original arrangement which was an exchange for the $150,000 specified which 3i owed him. And the 30,000 shares were to be repurchased at a future time at $5 a share.

Q Do you have --

A This is a false and misleading paragraph here in many ways.

Q Do you have any information about this transaction which you obtained from any source other than the public files of the SEC?

A Surely.

Q What other sources of information do you have with respect to this transaction?

A I am sorry. When I say surely, I mean 10-K's. What I meant surely was the SEC also has a copy of the annual report for the year 1970.

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Q Then it is correct that everything that you know about this transaction you have gained from reading the public files of the SEC?

A No.

Q Then what other sources have you used?

A As I said, when Mr. Nissan sent me the annual report for the year 1970, there was mention of this. So you see, what you have here as Exhibit 9 is a portion of this 1970 annual report which was photostatted in the SEC files.

But at the same time, in answer to your question, the information was gained originally --

Q Are the --

A Excuse me. In the annual report of 1970.

Q Are the facts correctly stated in the annual report of 1970?

A Certainly not. Certainly not. That is my point. The only time the record was set straight was in 1972 on the 10-K report.

Q And the basis for your claim that Paragraph 4 on Exhibit 8 and the 1970 annual report are false or misleading is what you discovered in reading the 1970 10-K?

A Surely.

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Q Do you have any other source of knowledge with respect to the falsity of either Exhibit 8 or the 1970 annual report?

A Would you repeat that, please?

(The question was read.)

A Other than the SEC files? No.

Q Are there any other false or misleading statements on Page 5 of Exhibit 8?

A Let's look at the next paragraph, Paragraph 5.

"While no specific estimate is made of current and future operating revenues and profits, 3i will continue to be profitable..." Having a loss in 1970 of $0.34 and having a loss of $0.47 in 1969? "Will continue to be profitable"? False and misleading.

Q Are there any others?

A Let's look at the next paragraph.

Q Paragraph 6 on Page 5 of Exhibit 8.

A And by the way, it is actually led in by a misleading word, actually two words in the previous paragraph, in this sense. "The key to its present and future success lies in its capability to generate an increasing volume of revenues which will yield higher profits."

Once again, I say "higher profits," when it had

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greater losses.

Now, let's look at Paragraph 6. You note that what actually happens here is, there are three columns as part of this paragraph; Annual Gross Revenues, Pre-tax Income, After-tax Income; $4 million, under that $6 million, and under that $12 million.

Where do these figures come from? The average person looking at this, and this basically is one of the things that stands out on this page, would appear this is their income, their earnings, I should say -- not income, and earnings, the annual gross revenues, their pre-tax income and after-tax income.

This would appear, this is grossly misleading. $12 million -- there is no mention made what this $12 million or $6 million refers to, pre pre-tax income or after-tax income.

The average person looking at this, these are very large numbers. After-tax income, in the third column, $1.3 million, 2+ million, 5+ million.

Q Then do I understand that Paragraph 6 on Page 5 is in your judgment misleading?

A Grossly misleading.

Q Grossly misleading. Are there any other

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statements on Page 5 which are either false or misleading?

A The last paragraph.

Q That is Paragraph 8?

A Yes. That is it. I would like to point out a few things on Paragraph 8. Third-quarter E, fourth-quarter E. What does the E stand for?

Q Do you know what it stands for?

A No.

Q Does it mean anything to you?

A Does it mean anything to me?

Q Yes.

A In the light of all that I learned on this matter, today, plus all the other matters that I pointed out as misleading, I would say that E apparently stands for estimate or estimated.

But I say this, that what is most misleading about this E, if it would be considered as estimate, is this. This report was made on May 17, 1971. That is the date of the report or the first page of the report you handed me. The fiscal year ends June 30, 1971, which means this report was prepared at the end of the fourth quarter.

Now, looking at this, and looking at it today,

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and let's say assuming that this E is estimate, I question why there would be an estimate for the third quarter if this report is less than six weeks away from the end of the fourth quarter. Why would there be an E standing for estimate for the third quarter? The third quarter ended March 31st, I believe, since we figured June 30, 1970.

So that is June 30, '70, a half year is 12/31/70, and the third quarter would end March 31, '71. This report was prepared May 17, '71. Why would the third quarter be an E?

Q Were the third-quarter figures for 31 released before May 17, 1971?

A Were they released? That is not a question of released. I said I wasn't sure whether even the half year was reported for 1971 to any source.

But what I am saying here is this. That this report was prepared on May 17, '71, six weeks after the end of the third quarter, and based upon analysis by an experiencedanalyst, I assume, I haven't had the pleasure of talking to him or meeting with him yet, but this was his work.

And so at this time even looking at this, why

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past, why would I assume this would be an E, estimate? This might very well be a typographical error. Certainly there is no asterisk explaining what the E is.

Let's go further --

Q I don't understand. Let me be sure of it to the extent that I can.

Is it your objection to that portion of Paragraph 8 that there is an E after "3rd" when there ought not to be an E after "3rd" because the third-quarter figures should have been included as they actually were?

A No. This is all part of a picture here because I am looking --

Q I am not interested in the picture. I am trying to get clear why that E after "3rd" is false or misleading.

A I have to tell it to you in the context of my entire answer.

I am looking now at a page from the SEC files, Page 12. I just want to point out this to you. There are two different types of photostats here. I am sure after I refer to it you will be wanting to mark this as one of your exhibits.

But I just wanted to point out, Exhibit 9 is a

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different type of photostat than what I am looking at, Page 12, the difference being that this is a New York photostat of the SEC and this is the Washington, D.C. photostat technique.

Q All that is interesting but it is not helping get this question answered.

A Looking at Page 12, Item 2, summary of operation for the years ended, in this particular case, 1968, 1969, 1970 and '71, the revenues for the year 1971, and that is the total year ended June 30, '71, was $1,052,000. $1,052,657 to be exact.

Q But those figures weren't available in May of 1971, were they?

A Please, sir, let me finish.

Q Well, were they?

A Let me finish, please. The total revenues on the last paragraph, Paragraph 8, total $2,124,000, more than double the amount that the company made.

MR. WILLIS: Let's mark this document, Page 12 of something, as Defendants' Exhibit 10 for identification.

(Document above described was marked as Defendants' Exhibit 10 for identification, this date.)

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Q I take it from what you said, Mr. Felton, from the information shown on Page 12, the total revenues for 1971 were only $1,052,657 and that was the figure that should have been on the bottom of Page 5 of Exhibit 8?

A No. Not should have been, but pretty close to it because I say this to you, sir. The first and second quarters totaled $773,000 where there was no E.

Q Were --

A Just a second, please. Now, you subtract the $773,000 from the $1,052 --

MR. KUNEN: $774,000.

MR. FELTON: I'm sorry. $774,000.

A The first two quarters total $774,000. Subtracting that from the total for the year of $1,052,000 means that for the second half of 1971, assuming that the first two quarters were correct and not false and misleading, that the third and fourth quarters should have only been a total of $278,000 whereas according to Paragraph 8, the third quarter which had been completed indicates, and I am referring to it, $550,000. And the fourth quarter, which they were six weeks into, $300,000.

Q Let me try to --

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A Let me go a little further.

Q I don't want you to go further unless you are answering my question.

A You asked me what was false and misleading.

Q You said the paragraph is.

A I want to tell you a little more about the paragraph.

Q I am not interested in more about the paragraph. I am trying to pin down exactly what you claim is false and misleading.

There are figures here for the first quarter of 1971.

Are they false and misleading?

The first line shows $316,000 revenue. $70,000 loss. Is that false and misleading?

A I don't know.

Q The figures for the second quarter, a profit of $40,000, pre-tax margin of 9.6%.

Is that false and misleading?

A I just want to say this about the first and second quarter. It is extremely unlikely, considering the year ended June 30, '71 as indicated on Defendants' Exhibit Number 10 marked for identification showing a total loss of $543,000 of which loss before

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extraordinary gains was $581,000. $581,000 loss for the year 1971 is, it is highly unlikely that a profit showing a loss of $70,000 for the first quarter and a profit for the second quarter could possibly be correct.

Q Do you know of your own knowledge that the information shown with respect to the second quarter of 1971 is false or misleading?

A Not at this time. However, based upon Defendants' Exhibit Number 10 marked for identification, it is hard to believe that there could be a loss of only $70,000 for a quarter and a profit the second quarter of $140,000 considering we have for the year a $581,000 total loss.

Q Do you know when the third-quarter figures for 3i were published by the company?

A I don't know even if they were ever published. They might be. But I don't know.

Q Did you follow the quarterly reports by 3i when you were holding the stock?

A Did I follow them?

Q Yes.

A Where would I follow them?

Q Make any inquiry of anybody as to how much

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money it made in the third quarter of 1971? Did you get any materials mailed to you by the company?

A I received no materials mailed to me with the exception, as I said, I might have received the annual report. But if I did receive it, it would come to my attention.

Q That is the 1970 report?

A That is not the report I am referring to that Mr. Nissan sent me. I am talking about I assume I received it because I am sure that all stockholders receive an annual report.

Q Did you get any other quarterly reports of the company?

A What was strange was there was no other report for '71.

Q Did you make any inquiry of the company or Mr. Nissan as to how much money it's making each quarter?

A If you recall, I indicated to you that Mr. Nissan said somewhere along the way that the company was going into the black.

Q Did you ever ask Mr. Nissan or the company as to exactly how many dollars were made in any quarter?

A No.

Q Weren't you interested --

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A Originally it was a loss --

Q Were you interested?

A Was I interested?

Q Yes.

A I was interested only to this extent; that one of the reasons that Mr. Nissan said that the stock would go to $15 and higher was the fact that there would be better earnings and then somewhere along the year, he said that the company would have good earnings going into the black.

Q But the amount of the earnings was of no significance to you; is that what you are saying?

A They certainly were. You mean specific amounts?

Q Yes, specific amounts.

A No.

Q One million or ten million?

A No. Because basically speaking we had here a case where this is a new business, according to Mr. Nissan, that was making acquisitions, building up their capabilities with the European data bank and looking to the future.

Q You knew all along that this was a very risky investment, didn't you?

A Certainly not.

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Q Did you know it to be a speculative investment?

A No. Let me just say this. What I consider speculative, any purchase of a stock, an equity, involves a certain amount of risk. The Dow Jones averages themselves reflect upward and downward movement of blue chip stocks which is basic industries in this country.

The fact is that the Dow Jones averages of blue chips a year before I purchased the stock or so had fallen to a very, very low point.

So basically, people who owned American Telephone & Telegraph and the cornerstones of American industry themselves had paper losses of many, many millions of dollars.

Now, somebody perhaps twenty years ago presented with Xerox with a good story by a broker would have considered Xerox or even IBM as a risky or speculative purchase.

At the same time, if the concept was there, people believe it and the difference was that it was founded on the truth and so people had tremendous appreciation of their money. So everything is speculative or risky when you buy equities.

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But at the same time did I consider I was going to Las Vegas, no. Did I consider Mr. Nissan or any of the statements to be at that time fraudulent, no. Did I consider this report when I saw it to be fraudulent, no.

Q But did you consider 3i stock to be a speculative investment?

A No.

Q Did you consider it to be a risky investment?

A The only risk that I anticipated of 3i was the fact, my fear, that the price of the stock was a little too high compared to what I originally had paid for it. And my fears were allayed by all the good news that Mr. Nissan told me about it and I certainly, when I sold my stock which I had purchased originally at 4 3/4ths for $9 and $12, I certainly would have taken my profits and looked elsewhere if I felt in any respect that this was a speculation for me.

The speculation was no longer a speculation when I was told coincidentally that a major bank, and I found out at that time it was the Marine Midland Bank, was buying the stock themselves.

This is the basis of my loss, at the time when it no longer was a speculation. If I could consider it

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in any respect, in any way, a speculation, it was only originally when I was told at 4 3/4ths, this is a good buy, buy it.

But when I received the annual report and the annual report showed the increase in assets, plus the fact that I was told about the acquisitions and all that, this was to me an exciting new business or newer business that was going to perhaps be another specialized type of IBM or small type of IBM or in the data field or something like Xerox.

Q Are you correcting your testimony now to say that when you first began buying the stock it was a speculation?

A I didn't say that. I said if you can consider any type of speculation whatsoever about anything to do with the stock, it was the fact that when I originally purchased it at 4 3/4ths in 1970 I didn't inquire too much at all about the stock except I trusted Mr. Nissan when he said it was a good buy and it was a very good price.

But when I got to know it from when he told me, it was certainly not a speculation at all. It was never a speculation. I was looking for appreciation, I told you.

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At the same time when I learned about all that Mr. Nissan told me that was good about it, certainly at that point I was considering this an entirely different situation because if it was a speculation, I certainly wouldn't pay $20 for a stock that I purchased a year before, approximately a year before, for 4 3/4ths.

I just thought at this point that everything that had been hoped for for this stock had actually arrived and was there.

Q In making your purchases of 3i, did you rely upon anyone other than what Mr. Nissan told you?

A Yes.

Q Who else?

A 3i Company on its annual report.

Q Anyone else?

A Indirectly on the Brownstein Marine Midland report which increased artificially the price of the stock.

Q Please. We will never finish this deposition if you make speeches and don't answer my questions.

A I am not making speeches. I am giving you

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Q I didn't ask for reasons.

Did you rely upon anyone other than Mr. Nissan and you now indicated the 3i Company, 1971 annual report?

A '70.

Q 1970 annual report. And you indicated indirectly Mr. Brownstein's report.

Is there anyone else you relied upon in making your purchases of 3i stock?

A Marine Midland Bank in connection with its purchasing of the stock --

Q Did you rely upon anyone else?

A -- resulting in the increased price of the stock.

Q Anyone else?

A Now, in retrospect, the acquisition of the two related companies, Information Corp. and Information Company of America.

Q Mr. Nissan told you about that. I excluded what Mr. Nissan told you.

A I am referring to something else. I am referring to the fact that the deal that was brewing which was signed either June 30, '71 or July 1 of '71, and in connection with that there is a motion pending so in reading the papers I see there was some preliminary

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work, according to the agreement, June 21 of '71 and I am sure that based upon what Mr. Nissan had said as early as sometime in March of '71, that the arrangements for this purchase caused the rise of the price of the stock so that --

Q Mr. Felton, I am not asking about that.

A You are asking for --

Q We are never going to finish this deposition unless you start answering the questions and not making these repetitive speeches.

A You are asking causation and I am giving it to you.

Q I am not asking causation.

A Or reliance. That is what I am giving you.

The price of the stock was reflected in March, April and May and June, or at least the latter part of March, April, May and June by the negotiations for the purchase of Information Corp. and Information Company of America.

And, I might add, the American Micromation deal which was being talked about which Mr. Nissan mentioned to me, I assume, there wasn't an identification but he said there was another deal pending a couple of months ago and the only deal that ever came to fruition was the American Micromation Industries, the purchase

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of the remaining batch of their shares --

Q Let's take a break. Maybe a five-minute break will help get us back on the track.

A I want to finish.

Q Have you finished your answer?

A I am spending a moment more.

Q Finish your answer.

A I reserve as part of my answer, if there were any actions on the part of Walston & Co., as a market maker of the stock at the time I was purchasing the stock, as to whether there was any inducement for me to purchase the stock during the time that I purchased it. The silence of Excerpta Medica Foundation and in particular their director and employe, Peter Warran, who was also a director of Bi Company, was another factor.

And, of course, the omission on the part of, and misstatements on the part of Main Lafrentz and Co. was another factor.

MR. WILLIS: Let s take a break.

MR. KUNEN: Before we take a break, until what time are you working today?

MR. FELTON: 5:00 o'clock.

(At this time, there was a brief recess.)

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BY MR. WILLIS:

Q Isn't it true, Mr. Felton, that neither the name Mr. Brownstein nor the name Marine Midland was ever mentioned to you in connection with 3i until after you had made all of your purchases of 3i?

A I am certain about Marine Midland Bank because it was presented to me by Mr. Nissan as a major bank.

But I can't be sure about Mr. Brownstein.

Q You say you are certain about Marine Midland?

A That it wasn't mentioned.

Q That it was not mentioned?

A No. Because when he mentioned to me a major bank, he put it that way.

But I don't know if he ever mentioned to me, I don't recall now whether he did or did not mention Mr. Brownstein's name. I don't know.

Q You mentioned having relied indirectly on Brownstein and his report. Am I correct that you did not have in your hands a copy of his report until after you had made your last purchase of 3i stock?

A Yes.

Q And that you did not even read the report very carefully than when you were first given a copy of the report in the backyard of your home?

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A When I said I didn't read it carefully, I didn't read it intensely in the questioning that you are asking me today.

Q I think you said you scanned it?

A Yes. But the things that I scanned were very good. For example, looking on the first page with the prices, the $0.40 and the $1+ for the years 1971 and '72 and also --

Q Was that the first time in your backyard of July 1971 that it had ever been brought to your attention as to what the earnings were for 3i Company in 1970?

A You mean the $0.25?

Q Yes.

A Yes. Wait just a second, please. No. When you say brought to my attention, I recall reading the earnings on the annual report when it was sent to me by Mr. Nissan.

Q That is Exhibit 9?

A Yes. This is part of the annual report, Exhibit 9.

Q How do you justify, Mr. Felton, as a lawyer, charging that a report is false, misleading and fraudulent which you had never read?

A What I read in standing with the things, some

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of the things that I pointed out to you today.

For example, the fact that the earnings were going to be so great for the year 1971 and '72.

By the way, there are other things that were factors, as well. The fact that Mr. Nissan, now, at least after he told me in '73, being an insider, a principal of the company, considering the information on this report for the earnings of $0.40 for '71 and $1+ for '72 plus some of the other things that I pointed out to you, considering that with the relationship or the fact that there was contact between Mr. Brownstein and Mr. Nissan.

Q Who told you that?

A Who told me? How did Mr. Nissan know --

Q Don't ask me questions.

You say there was contact between Nissan and Brownstein.

Who told you?

A Who told me?

Q Yes.

A The answer to the complaint told me. Just a second, now. Basically speaking, remember I said to you before I wasn't sure whether Mr. Brownstein's name or Joel was mentioned by Mr. Nissan to me.

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Somehow or other, as part of that conversation which I paraphrased yesterday, there was some connection in the way that Mr. Nissan stated that a major bank was putting out a very favorable report.

Q In Paragraph 35 --

A Where did Mr. Nissan get that information from?

Q In Paragraph 35 of the amended complaint, you allege, and it is not on information and belief, you allege that defendant --

A Just a second. Let's refer first to the amended complaint.

Q You mean the entire complaint?

A Yes.

Q I will amend my question.

As to Paragraph 35, you allege that defendant Brownstein discussed the finances of defendant 3i Company with defendant Nissan prior to defendant Brownstein's preparation of this report.

Now, who told you that?

A By the way, this was admitted by Mr. Brownstein's answer and admitted by Mr. Nissan on behalf of Walston & Co.

Q I am asking you, who told you that?

A This is my conside[illegible]

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suddenly I realized that what I might be dealing with here was a --

Q So nobody told it to you?

A But it is admitted here in the answer.

Q I am asking you about where you got the information and you have testified that no one told you, it was just your opinion?

A I didn't say that.

Q Did anyone tell you?

A I just want to say this to you. In light of the date of this report, if you recall yesterday I asked you if there was a second report and you refused to answer me, the date on the report that you handed me yesterday which I have been testifying to which is Defendants' Exhibit Number 8 is dated May 17, '71.

Now I told you I saw the report sometime in July, perhaps even the end of June. Close to around that time, either the end of June or sometime in the beginning or middle of July.

Now, not having the report before me when I prepared the complaint, this amended complaint which you are referring to, and knowing that Mr. Nissan knew about this report, certainly at the beginning of June of '73, then my belief was that Mr. Nissan and

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Mr. Brownstein had talked about the report before it was prepared.

Q Did anyone tell you that they talked about it before it was prepared?

A The dates and the timing told me.

Q No human being told you?

A Mr. Brownstein admitted it on your answer, on his answer that you submitted on his behalf, and also Mr. Nissan and Walston & Co. admitted it as well. So it is obviously correct.

Q Was there any person who told you that information prior to your preparation of the amended complaint in this action?

A By Mr. Nissan's telling me that a major bank is putting out a favorable report on 3i on June 7, '71, considering that I saw this report at the end of June, early July or middle of July sometime, my recollection is at the end of June or sometime in the beginning of July of '71, perhaps the middle, I think toward the end of June or the beginning of July, I assumed, based on the timing of those two events and not having the report before me as to the date of it, that Mr. Nissan had discussed the report with Mr. Brownstein before --

Q Did anyone tell you that Mr. Brownstein and

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Mr. Nissan discussed the report?

A I have given you my answer the best way I can.

Q The easy way is to answer it yes or no.

A I can't answer yes or no. I can't answer yes or no.

Q Did anyone tell you prior to your filing the amended complaint that Mr. Brownstein and Mr. Nissan had discussed the finances of 31 prior to the preparation of the report?

A The dates that I told you of these events told me. That is where my belief came from.

Did Mr. Nissan say yes, I discussed the report, I discussed the affairs of 31 with Mr. Brownstein and we worked out the figures, or something like that? No.

But the fact of the matter is that I didn't see the report until approximately three to four weeks after that date and I didn't have the date of the report before me, which certainly gave me enough founding for Paragraph 35 and I was correct in view of the fact that you admitted this in your answer on behalf of Mr. Brownstein and Mr. Nissan on behalf of Walston & Co.

Q You say that at the time of his aforesaid

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discussion with Mr. Nissan, defendant Brownstein knew that defendant Nissan owned securities of defendant 3i Company.

Now, who told you that?

A 36 is an outgrowth of 35.

Q You are alleging that Mr. Brownstein had certain knowledge. And I want to know what the basis of that allegation is.

A I am telling you again, 36 is an outgrowth of 35. If I have a belief that Mr. Nissan discussed the finances of 3i Company with Mr. Nissan, then --

Q Once you start guessing, there is no limit.

A There is no guessing, sir. There is no guessing at all. If there were guessing, there would be denials here. But there were admissions on your part for Mr. Brownstein on Number 35.

There are denials on 36 but not as to 35.

I want to say something else as to that point, please. Paragraph 32 of the amended complaint, "At all times herein mentioned defendant Nissan was a shareholder in securities of defendant 3i."

I refer you to the answer submitted on behalf of Nissan and Walston in this regard. And I say this to you. Based on the omissions of Walston and Nissan

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to Paragraph 32 and based on the admissions of Mr. Brownstein, your client, and also Nissan and Walston to 35, there is no guessing.

MR. RICHARD W. LYON: I object at this point. I would like to see if anyone has a copy of the answer that Walston and Nissan filed. I don't have it with me. It is not my recollection that Walston and Nissan admitted Paragraph 32.

MR. FELTON: But they admitted 35.

MR. RICHARD W. LYON: You just testified we admitted 32 and I would just like a copy of the answer.

Q To your knowledge, Mr. Felton, while we are attempting to get that answer to Paragraph 36 --

A Yes.

Q Did you have any fact on which that allegation was based as to the knowledge which Mr. Brownstein had at the time?

A I would like to wait a moment until you get, resolve the points that Mr. Lyon raised as to number 32.

Q We can come back. You complain about our not moving along. Let's [illegible]

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along.

MR. RICHARD W. LYON: I don't say it is necessary.

A I say this. It was admitted --

Q I am asking you for the basis of your allegations.

A I am going to give you the basis of my allegations.

Q We may have to suspend this deposition if you can not bring yourself to answer those questions that are put to you, Mr. Felton. We will have a good look at this transcript and we can decide whether you are answering these questions properly.

A I am answering these questions properly, as properly as I can, sir. This particular complaint was prepared upon information and belief and you are asking me as to Paragraph 36 and I am telling you that that Paragraph 36 is an outgrowth of Paragraph 32 and Paragraph 35.

If I had anything in writing, is that your question, to substantiate Number 36? I say to you specifically, no.

Q Did you have any source --

A I will answer this to you this way --

Q Did you have any source for the information

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alleged in Paragraph 36?

A What do you mean by source, sir?

Q Was it made out of whole cloth or did you have somebody tell you that or did you make some investigation and find out what Mr. Brownstein's knowledge was? What was your basis for making the statement as to what Mr. Brownstein knew?

A The basis of my statement was the outgrowth of my statements as to the reasons in Paragraph 35.

And that is that Mr. Brownstein, discussing the report with Mr. Nissan, Mr. Brownstein being a trained analyst, the unusual nature alone of an analyst writing a report on a company and contacting a registered representative in a brokerage firm that makes a market, are making a market in a stock in itself is very highly suspect and unusual.

I have no facts, I have no facts, written facts to support Number 36, other than what Mr. Nissan told me that I testified to before.

Q Returning to Exhibit 8, Page 5, apart from those portions which you have previously listed, are there any other sentences which are false or misleading?

A The total profit for the year of $720,000.

Q We already covered that

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A No, no. We didn't cover profit. We covered revenue. I said the total revenue was $2 million or more than double what was actually reported. But the profit of $720,000 for the year, whereas actually there was a loss of $581,000.

Q Are there any other --

A I want to say this. That difference --

Q I am not interested in the difference.

A You asked me specifics and I will give it to you.

Q If you answer my questions, Mr. Felton, we will move along. You have a chance to ask yourself questions at the end and you can go along as much as you like, but I want to move this deposition along. Please answer simply in a few words my questions without paragraphs of apologies.

A Apologies?

Q Apologies. Are there any other sentences on Page 5 of Exhibit 8 which are false and misleading?

A The last column, pre-tax margins.

Q Are there any other statements on Page 5 of Exhibit 8 which are false and misleading?

A Not that I know of.

Q Turn to Page 6.

Would you tell me if there are any statements

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on Page 6 which are false or misleading?

A Second paragraph.

Q The entire paragraph, or parts?

A The first sentence. "We estimate that fiscal 1971 results will be in the range of $0.40-0.45 per share on revenues in excess of $2 million, which will be untaxed due to tax-loss carry-forwards."

Q And that is false and misleading?

A Grossly misleading.

Q Are there any other statements on Page 6 which are false or misleading?

A The next paragraph.

Q Paragraph 3 on Page 6. The entire paragraph or only part of it?

A No, no. "About 1.6 million shares are outstanding, with management holding less than 300,000," I assume shares.

Q Is that statement false?

A Grossly misleading.

Q Any other ---

A Would you like to know why?

Q Any other statements in the third paragraph which are false and misleading?

A In that particular paragraph? No.

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Q In what respect is the sentence which you read concerning the number of shares outstanding false and misleading?

A I don't have the exact number before me. But there is a point to this extent, that the voting rights of certain shares held by Gerald Brodsky were in a different position than the shares of common stock as to voting rights.

Also, there was a continuing flow of sales of these shares by Mr. Brodsky by conversion of the common stock B that he owned into common stock A which he was selling all along, or not all along but on certain -- at certain intervals which were not disclosed by this particular paragraph.

Q Is it your testimony that the figure 1.6 million shares outstanding is wrong?

A I don't believe so.

Q Is it your testimony that management held some figure different from "less than 300,000"?

A First of all, there should have been a description of what management held, whether it was A or B.

The fact is that -- the facts are that I learned since then that Mr. Brodsky by his holding the stock was considered a parent of the -- just a second --

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by the SEC of the company. This wasn't disclosed in this particular sentence.

Q You are not challenging the sentence? You are saying that more should have been said. Is that what you are saying? These are omissions of particular facts, omissions?

A Yes.

Q You are not challenging the actual sentence. You are challenging the failure to say more.

A The accuracy of the sentence is determined by misrepresentations or omissions. These are omissions of material facts, very much so.

Q Are there any other false or misleading statements on Page 6 of Exhibit 8?

A There is nothing false and misleading that I can see with the exception of the fact that there are omissions of material facts which make the conclusion false and misleading.

Q All right. Then to summarize, have you now testified to each part of Exhibit 8 which is false or misleading, leaving aside your claim that certain additional matters should have been included?

A With the exception of those matters that were omitted, to make the conclusion correct, I say yes.

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Q Would you merely list for us those matters which were not included in Exhibit 8 which you contend should have been included and can you do it without reading from your complaint?

A I would like to read from the complaint because it will refresh my recollection.

Q Can you answer it without reading from your complaint?

A I won't read it but at the same time I will refer to it.

Q Can you answer it without referring to the complaint? If you can't, say so, and you will refer to the complaint.

A I can't.

Q All right. You will refer to the complaint and merely itemize those facts which you claim should have been set forth in Exhibit 8.

A Yes.

Q All right. What is the first one?

A The first one was the fact that Mr. Brownstein admitted speaking to Mr. Nissan before preparing his report.

Q What is the second fact that should have been set forth in the report?

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A That Mr. Brownstein discussed finances with Mr. Brodsky prior to preparing the report.

Q What is the third fact which should have been set forth in this report?

A Mr. Brodsky was annually converting large blocks of common stock B to common stock A and selling same.

The fact that it was reported periodically by Mr. Brodsky to the SEC --

Q What is the next fact that should have been set forth in Exhibit 8?

A As I briefly touched on, the data bank license was improperly set up as an asset at cost on the balance sheet.

Q What other facts should have been set forth in Exhibit 8?

A That there really wasn't any startup of this data bank facility producing any ascertainable earnings for the company. That is the Excerpta Medica data bank license.

Q What other facts should have been set forth in the report?

A With reference to the Scientific Literature Corporation which is a subsidiary of 3i by an amendatory

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agreement with an S. Kim Kessler and a Geraldine Kessler who were employed in 1971 by the subsidiary corporation that the amendatory agreement between the Kesslers and 3i provided for additional issuance of 44,800 shares to the shareholders of Scientific Literature Corporation, Inc. of which the Kesslers were the major stockholders, and the original agreement between the Kesslers -- not the Kesslers -- between Scientific Literature Corporation and 3i was conditioned on earning results up to the end of the year of 1971, that this was a reckless payment of shares when in fact in the year 1970, up to the year 1970, the Scientific Literature Corporation had a net loss for the year '70, so there was no basis in fact for assuming that the year '71 would be a year that would meet the qualifications of the original agreement whereas 44,800 shares were given under the amendatory agreement to the Kesslers.

This wasn't mentioned in the report.

Q What other facts do you claim should have been mentioned in the report?

A The earnings for the year 1970 should have been a loss of $0.34 a share.

Q I think we covered that. I don't mean

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to be repeating anything that you covered.

But with respect to additional facts that you claim should have been set forth in the report, I would like you to identify others that you know of.

A That is basically it. In the light of looking at the report today and not having it before me when I prepared the amended complaint.

Q In your complaint there is an allegation in Paragraph 43 that Brownstein mailed, delivered and/or distributed copies of the aforesaid report to other firms, banks or brokerage houses in the business and investment community.

What firms, banks or brokerage houses did Mr. Brownstein mail the report to?

A To Mr. Nissan and/or Walston & Co.

Q What do you mean by Nissan and/or Walston & Co.? Do you know whether or not he mailed it to Mr. Nissan?

MR. FELTON: By the way, in answer to your question, I just want to refer back to what Mr. Lyon previously asked about, Number 32.

Have you since learned the answer to that?

MR. RICHARD W. LYON: Yes, I have.

MR. FELTON: Was I correct, Mr. Lyon?

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MR. RICHARD W. LYON: No, you were incorrect.

MR. FELTON: In what respect?

MR. RICHARD W. LYON: In this respect. We do not admit the allegations in Paragraph 32.

MR. FELTON: Will you read the answer to 32, please?

MR. RICHARD W. LYON: Well, I can, as you have done from time to time during the deposition, paraphrase the answer. Would you like that?

MR. FELTON: No. Will you read it?

MR. RICHARD W. LYON: I will read the allegation first.

MR. FELTON: Please.

MR. RICHARD W. LYON: The allegation is, "At all times herein mentioned defendant Nissan was a shareholder in the securities of defendant 3i Company."

And the answer to the allegation is contained in Paragraph 7 of the answer of Nolston and Nissan which reads, "Deny each and every allegation contained in Paragraphs 32 and the other paragraphs, except admit that Nissan was and is a shareholder of 3i."

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So you will note there is no reference to time. The allegation is indiscriminate as to time and that is why it was not admitted.

MR. FELTON: But it wasn't a denial. It was a denial with qualification.

Q How do we stand on the answer to my question about whether you have any knowledge that Mr. Brownstein sent a copy of the report to Mr. Nissan?

A As Mr. Lyon has now his answer before him, I would like to refer to the allegation of Paragraph 65 of the amended complaint wherein defendant Nissan obtained and/or received a copy of the aforesaid Brownstein report on defendant 3i Company and that was admitted by Mr. Nissan and on behalf of Walston & Co. both.

MR. RICHARD W. LYON: What paragraph is that?

MR. FELTON: 65. Would you care to refer to the answer, sir, and make a statement for the record?

MR. KUNEN: I don't know what we are getting at.

MR. RICHARD W. LYON: Off the record.

(Discussion off the record.)

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MR. WILLIS: Let's continue with the deposition.

A There was an admission of the fact that Mr. Nissan received a copy of the report. I will say this, I will answer in my way.

Q You are answering in your way continuously which is a wholly improper way which I could understand for a layman but a lawyer ought to understand the way to answer a question, and when you answer in the way that you, a lawyer, are doing, it is obvious that you are being deliberately evasive.

A I am not at all being evasive. What I am saying is this. I had certain facts at my disposal in preparing this complaint, but other things were statements told to me during my transactions in 31 during the year 1971. I am trying to give you complete answers.

Q In Paragraph 43 of your complaint you allege that Mr. Brownstein distributed the report to other firms, banks or brokerage houses.

I ask you to name those firms, banks and brokerage houses. The only answer we have gotten so far, and I quote, "Nissan and/or Walston & Co."

My question to you is, do you [illegible]

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knowledge when you drafted the amended complaint that Mr. Missan had received a copy of the report from Mr. Brownstein?

A Before I answer, I want to say this. I take umbrage to what you said before about being evasive and the fact that my answers have been framed in a certain way.

Any of your colloquy describing my answers I reserve for time of trial to move to strike, any of your comments.

I want to say this to you. You have to read 43 in context with 44 in the sense that 43, "Defendant Brownstein mailed and/or distributed copies of the aforesaid report," and 44, "Defendant Marine Midland by its officers, agents or employes mailed and delivered."

I know this, that Mr. Missan had the report. I say now, this was my understanding when I prepared this complaint, that he had the report.

Q Where did you get the understanding?

A Where did I get it?

Q Where did you get the understanding?

A I got the understanding in my conversation with Mr. Missan on June 7, 1971.

Q Did Mr. Nissan tell you on June 7 that he had received a copy of the report from Mr. Brownstein?

A I just don't -- I want to qualify that a moment. Not on June 7, '71. On June 7, '71 Mr. Nissan said the company was putting out a very favorable report.

I believe Mr. Nissan referred to the report the day that I sold the 300 shares of stock for 19 3/8ths which was the latter part of June of '71 and mentioning other things, I believe Mr. Nissan said something to the effect -- once again I am paraphrasing it -- it might have been June 2, 1971 or maybe one of the conversations a little after that but somewhere in that period of time, something to the effect that the report is good.

Obviously, if the report is good, or something to that effect, is certainly --

Q Were there any other firms or banks or brokerage houses to which either Mr. Brownstein or Marine Midland distributed copies of the report?

A Mr. Falk.

Q Anyone else?

A Perhaps Walston & Co. itself. As I said before, perhaps Mr. Falk's employer, Goldman Sachs & Co. I don't know.

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Q I am only asking for what your knowledge is and so far you said Mr. Nissan and Mr. Falk.

A Right.

Q I am not interested in the perhapses or maybes.

A All right. Fine. That is my answer.

Q Anyone else who you know received a copy of the report from either Brownstein or Marine Midland Bank?

A At this time, no.

Q Do you know of any bank to which Marine Midland or Brownstein sent a copy of the report?

A I since learned there is more than the Marine Midland Bank - New York. There is obviously Marine Midland, Incorporated with many branches.

When you say bank, any other bank, you mean outside the Marine Midland system; is that correct?

If you recall my answer yesterday, Mr. Falk told me there were purchases up in Rochester and Syracuse.

Q But he said nothing about a report being in Syracuse?

A No.

Q Do you know if a bank in Syracuse received

a copy of the report from Marine Midland or Brownstein?

A No.

Q Do you know of any bank to which Brownstein or Marine Midland sent a copy of the report, Defendants' Exhibit 8?

A Not at this time.

Q Do you know of any other firm apart from Goldman Sachs and Walston & Co. which you identified which would presumably be included in brokerage houses, do you know of any other firms to which either Brownstein or Marine Midland sent a copy of Exhibit 8?

A At this time, no.

Q Apart from Exhibit 8, do you know of any other report which Mr. Brownstein or Marine Midland prepared or distributed in connection with 3i Company?

A The 8 that you showed me yesterday, that you marked for identification?

Q Yes. Any report other than Exhibit 8?

A In context with my previous answer when you asked me if this was the report, the exact report I saw. Referring to my previous

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at this time.

Q Did you ever meet Mr. Brodsky?

A No.

Q Did you ever have any correspondence or dealings with him?

A No.

Q Did you ever correspond with anyone at 3i Company?

A No.

Q Did you ever get in touch with them?

A My only contact with 3i was after the institution, the original institution of this action, when I was contacted and called by Mr. Benjamin Ronn who identified himself as the present president of the company. He called me up from Philadelphia.

Q This was after you filed the complaint?

A Yes.

Q What did he say to you?

A Well, for one thing, he was unhappy about the lawsuit, in view of the fact that the company was very shaky and he was worried about, frankly, paying his legal bills.

Q You said he was unhappy and you said he was worried.

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What did he actually say to you?

A I don't recall what he said. I am just telling you what I recall as to the gist of our conversation.

Q This conversation was not many weeks ago, was it? How long was the conversation?

A Eighteen weeks ago, approximately.

Q How long did the conversation last?

A Approximately. How long did the conversation last? I don't recall. Maybe ten minutes or so.

Q When he told you about the shaky condition of the company and his unhappiness at having to pay legal fees, what else did he tell you in that ten minutes?

A He started to tell me that since I was a shareholder of the company that they were turning the corner of profitability and that he was telling me how excited he was about the Mauchly Wood acquisition, and that things were going to get better.

There was new management, something to the effect that the new management couldn't be responsible for what happened, if anything, in the past.

That is basically the tack he took and this is what -- I used the term paraphrase yesterday, I think it is a bad term to use, for all I said is gist,

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this is the gist of my understanding of our conversation.

Q What did you say in response to his comments?

A I told him that my understanding is that this was a multi-million-dollar fraud and that I was planning and had instituted a suit on behalf of myself and stockholders for what I considered to be a tremendous amount of money that was lost.

I now recall something to the effect, I asked him how many stockholders he had, I mean there were, and he said approximately 2,000. He was telling me they had offices in Houston. I told him I was glad to talk to him. ~~He~~ I said at the same time it was irregular to talk to me because in view of the fact that I am an attorney suing his company and in my opinion he should turn it over to an attorney and have his attorney contact me.

At that point he said to me the reason he was telling me all this about the company's shaky condition was not only the lawsuit but the fact that I was a stockholder and he wants me to know.

And so I said to him again I shouldn't discuss it even though I am a stockholder and you are the president of the company, I should speak to an attorney representing the company, and he said to me the attorney he wanted me

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to call was a Richard Royds, R-o-y-d-s, I believe that is the spelling of his name, and he gave me the telephone number in Houston of Mr. Royds and he said I should contact Mr. Royds

I asked him, is Mr. Royds going to represent the company in my lawsuit, and he said he wanted me to talk to Mr. Royds. I said I prefer not to talk to Mr. Royds to discuss it further, but I would like an answer to my complaint. And that was it. This is the gist as I recall approximately eighteen weeks ago.

Q Have you had any other conversations with him?

A No.

Q Any other correspondence?

A With him or anybody else in 3i? No. Only with Mr. Wien.

Q Have you had any discussions or conversations with any other officer or employe of 3i?

A No.

Q Any discussions or conversations with any ex-employe of 3i or ex-officer of 3i?

A No.

Q Did you discuss your claim with Mr. Nissan?

A You mean the claim which you are referring to

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as the subject of this lawsuit?

Q Yes.

A No. I never heard from Mr. Nissan after I instituted this lawsuit. No. I have never spoken to Mr. Nissan since then.

Q Did you tell Mr. Nissan before the lawsuit was commenced that you were going to commence a lawsuit?

A No.

Q Did you ever tell anyone prior to your filing the lawsuit that you were going to bring this case?

A No. When you say anyone, you mean any one of these parties or employed by them?

Q Anyone in the world. Did you discuss this claim with anybody?

A My wife and members of my family.

Q Anyone outside your family?

A No.

Q Have you heard from or had any discussions with any other stockholders or former stockholders of 3i Company?

A Repeat that, please.

(The question was read.)

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A Mr. Falk; my brother, Dr. Felton.

Q Anyone else?

A I don't believe so.

Q What discussion have you had with Mr. Falk about this matter?

A Are you referring to any discussions about the lawsuit itself, or just discussions about the matter?

Q Concerning the matter. Let me rephrase my question.

Other than the conversations with Mr. Falk that you have already described to us, have you had any discussions with Mr. Falk about 3i?

A Yes. I told him I was going to start a lawsuit.

Q What did he say?

A This is something that I suggested to you yesterday. I was very reluctant to discuss this with Mr. Falk. I was also very reluctant because of the coincidences to involve Mr. Falk. And Mr. Falk is not too happy about the coincidences that are involved here.

And I once again want to underline the fact that Mr. Falk himself in no way induced me to purchase the stock. You see? And I told this to Mr. Falk. I just feel I owe a duty to the truth and I believe

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there was this coincidence which corroborated what Mr. Nissan told me and a duty to the stockholders.

MR. KUNEN: You told us all that. Answer his question.

MR. FELTON: Please. I am answering Mr. Willis.

MR. KUNEN: But you are repeating and taking up my time and spending my money.

Q The question is a very simple one.

MR. FELTON: Once again, I move to strike the colloquy on the part of --

MR. WILLIS: It is the only pertinent thing said in the last few minutes.

MR. FELTON: I move to strike that colloquy as well and all other colloquy that has gone on before up to now. I reserve my rights to the trial.

Q Let me repeat, what did Mr. Falk say when you told him you started the lawsuit?

A He said this -- once again, the gist of what he said. That he wasn't very happy with the fact that there was a coincidence here, that he never showed me the report for purposes of inducing me to take any action in 31; that he did not have the report

himself when he purchased his own shares in 3i.

That is basically what it is.

Q Did he say to you that he didn't think you should be suing Marine Midland and Brownstein?

A I don't think he is in a position to say that.

Q Did he say it, though, in substance?

A No.

Q Did he make any comment at all about your suing Marine Midland and Brownstein?

A I guess the only comment perhaps was the fact that he liked Brownstein and he wasn't sure that Brownstein --- this is now his opinion -- was doing anything wrong.

However, he didn't have at his disposal the admissions of the fact that Brownstein spoke to Nissan as a fact or anything else which could lead him to any such conclusions.

Q Did you ask Mr. Falk to give you a copy of the report?

A Did I ask him to give me a copy? I asked him if he had a copy, yes.

Q And what did he say?

A He said he didn't.

Q Have you given us everything that Mr. Falk

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said to you in that conversation?

A Mr. Falk is a friend of mine. I spoke to Mr. Falk many, many times. This would be impossible -- many, many subjects. It would be impossible to remember every comment made.

But basically this is the tack that Mr. Falk has taken, and I respect him in this position and I am sorry for the coincidence involved in this matter.

But at the same time, I want everything to be before you and before the court involving this report and anything else I have information on.

Frankly, I would have preferred it if it had not been Mr. Falk or anybody else, for that matter, because as far as I am concerned, I think the whole thing is a nasty business, as far as the report is concerned.

Q Did you ask Mr. Falk if he would like to join you in the suit?

A No.

Q Did you ask him in substance to consider joining you as a plaintiff in the lawsuit?

A No.

had spoken to me. I didn't know how to spell his last name. As I indicated yesterday, I didn't want to originally even ask Mr. Falk for the spelling of his name.

So I thought by instituting a lawsuit as Joel Doe I would be able to determine it.

MR. WILLIS: This is a good time to break for lunch. Shall we resume at 1:30?

MR. FELTON: That is satisfactory.

(Whereupon, a luncheon recess was taken.)

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AFTERNOON SESSION

(1:40 P. M.)

ROBERT E. FELTON, having been previously sworn, was examined and testified further as follows:

EXAMINATION (CONTINUED)

BY MR. WILLIS:

Q At your session yesterday, Mr. Felton, you agreed to bring today the yellow sheets on which you have calculated your securities transactions. Do you have those yellow sheets here?

A No, I don't. I will have it tomorrow. On the way in, I got a late start, and I forgot them. I just want to say this. I will be presenting them but I object to their being introduced in evidence.

Q We may object also, you can never tell.

A You realize what you are referring to happens to be a very, very rough running account by myself to determine the accuracy of the brokerage status.

Q Mr. Felton, you were asked to produce here today certain documents which were set forth on a schedule of documents.

Do you have any documents pursuant to that notice other than what has been produced here today?

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and marked?

A Yes. I have those pages of the S.E.C. records that I photostated, the S.E.C. records both in Washington and in New York.

Q May we see those?

A Surely. This is not the complete record.

Q But it is complete so far as what you made copies of?

A What I made copies of, yes. I might add that they are in no particular order, but they were taken out and looked at on different occasions by me so that you may find some of the documents may be completely out of position with the rest of them in that particular batch, the total batch that you are looking at.

Q Would you be able to identify for the record the particular S.E.C. documents from which you made partial copies?

A I should. I can say this, that some of them are the 1970 10K, 31, the 1971 10K, 1972 10K, then there were various 8K's which contain some of the agreements of the parties. That is how it was identified by the S.E.C. and various other public reports. The difficulty lies in the fact that there are no particular identification on many of those pages that will identify them

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with a particular section or set of papers that were filed with the S.E.C.

Q For example, the one on top appears to be a letter from 3i to the office of Filing and Reports at the S.E.C., dated tober 3, 1972.

Do you have any idea what that is a part of or is there any way of identifying any of these pieces of paper to a particular report?

A No.

Q It is just random pages here and there?

A It wasn't random. As I told you yesterday, I spent many, many hours reviewing the S.E.C. records and the difficulty both in New York and in Washington is this. There are viewers and there are photostat machines. The viewers are many and the photostat machines are few. The result is that when you are fortunate enough to get to a photostat machine, there is tremendous pressure on you to get off it and somebody else to come forward. The result is if I were to stand down and mark each page as I photostated it, I would require the services of the machine for an unreasonable length of time as far as the other people who are waiting to use the machines. By the way, I want to say this. I requested as part of my discovery and inspection, I requested to have the 3i

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Company furnish me with a copy of all records filed by them with the S.E.C. and upon my receipt of same I would be able to identify those pages in the position that they fall into with the papers, the total mass of papers, that were filed with the S.E.C. By the way, in Washington, I believe, there are four, perhaps five large folders containing all those papers.

MR. WILLIS: What I would like to propose is that we mark this group as an exhibit and that we be permitted to make a copy of them and then return the group in its present form to you tomorrow. Is that agreeable? I don't want to mark each document or go now through each document but I believe we need some record of documents you have produced pursuant to the notice.

THE WITNESS: The problem is control, you know what I mean ....

MR. WILLIS: I am willing now to send them out to a reproduction company, that is what I would do with a quantity of this size, anyway.

THE WITNESS: Off the record.

(Discussion off the record)

MR. WILLIS: Mark them as a group now.

(The batch of documents was marked as

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Defendants' Exhibit 11 for identification)

MR. WILLIS: The documents will be marked as 11 until such time as we determine what they are.

Q Mr. Felton, Exhibit 11, I take it, is the material which you are producing pursuant to the notice which was served upon you plus those documents which have heretofore been marked?

A It is not complete in this sense. There are three agreements involving Excerpta Medica Foundation and 3i which I have not produced today because I am working on a motion that is pending before the court in this regard.

Q Can you produce those tomorrow?

A I don't plan to be in my office tomorrow.

Q We will have to, I assume, leave your deposition open until they are produced so we can mark them. Are you willing to submit them?

A Yes. There is no question. It is a matter of logistics. I am photostating certain pertinent papers which I am marking as exhibits for purposes of my motion and I feel that, I felt why bring them here and have to bring them back to my office. I thought I would point it out to you.

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the notice which you have, which have not yet been produced and marked other than those agreements with Excerpta Medica?

A That is it.

Q The notice required that you produce all correspondence between you and Walston & Co. and any of its officers or employees. Have you produced all correspondence with Walston?

A Yes.

Q You have none at your home or your office?

A No.

Q Any correspondence with Mr. Nissan?

A No.

Q Never had a letter from him?

A No.

Q Nor have you ever written him a letter?

A No.

Q And have you had no correspondence with anyone connected with Marine Midland Bank?

A No.

Q And I believe you testified you have had no correspondence with 3I Company?

A Correct. Other than perhaps their annual report which I don't know what channels, if any, they took to

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give it to me.

Q But you do not have that annual report in your possession now?

A No.

Q What is your procedure with respect to assembling or collecting material pertaining to securities in which you have a position or interest?

A Actually when you say -- I don't know what you are referring to when you say procedure.

Q Do you set up a file on the security? Do you start collecting published material concerning the company? When you get an annual report what do you do with it?

A If I got the annual report, and I did get the one that was sent to me by Mr. Nissan, if I am talking about the original one, in the context of your previous question of getting something from 3i., I read it. That is about it.

Q Do you file it?

A No.

Q Do you have a procedure of keeping it?

A No. I didn't think I had to file it, in the sense that I relied on Mr. Nissan to take care of my investment interests. When he sent me a report it was for

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my reading edification, which I spent the time. I indicated before looking at it and that was it. I relied on Mr. Nissan's expertise as far as, you know, my investment was concerned.

Q Did you have any correspondence with Gerald Brodsky?

A None.

Q Maurice Brodsky?

A None.

Q Arthur Elias?

A None.

Q Marvin Riesenbach?

A No.

Q Marvin Schiller?

A No.

Q Irving Sher?

A No.

Q Peter Warren?

A No.

Q Fred Von Eugen?

A No.

Q F. Kin Kessler?

A S. Kin Kessler.

Q S. Kin Kessler?

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A No.

Q Geraldine Kessler?

A No.

Q Or Joel Brownstein?

A No.

Q Have you had any correspondence with Excerpta Medical Foundation?

A No.

Q Or the Stichting Excerpta Medica Foundation?

A No.

Q Medische Referaten N. V.?

A No.

Q Infonet N. V.?

A No.

Q Eltrac N.V.

A No.

Q Have you had any correspondence with Main Hafkenth & Co.?

A Correspondence? No.

Q Do you have in your possession any report or evaluation or summary or recommendation relating to the financial condition of 3i other than what has been produced and marked?

A No.

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Q Or any report, summary or recommendation relat-
to 3i Company other than what has been produced?
A No.

Q Do you have any documents in your possession, whether they are correspondence or handwritten notes or memoranda or whatever that relate to any of the allegations of the complaint other than what you have produced here today and has been marked?
A I have notes that I made, my work product.

Q Would you describe what those notes are?
A The notes were gleanings in the course of my preparation of the complaint, gleanings of facts that I'd learned from my investigation of the S.E.C.

Q Materials, Exhibit 11?
A Yes.

Q Were those notes relating to anything that you gleaned from Exhibit 11?
A No.

Q Do you have any notes of any conversations that you had with anybody relating to the allegations of the complaint?
A No.

Q In Paragraph 56 of your complaint you refer to Mr. Brodsky converting large blocks of common stock Class B into common stock Class A and then selling the

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Class A stock to unsuspecting purchasers. So far as your investigation disclosed, did Mr. Brodsky have the right to convert his Class B stock into Class A stock?

A When you say the right, what do you mean by right? You mean the right as far as the 3i is concerned, in this particular position as the so-called parent of 3i?

Q All right. In the sense that under the certificate of incorporation and the bylaws or under the terms describing the two classes of stock that holders of Class B had the right to convert the stock into Class A.

A I assume he had the right. I also, in my investigation, found that Mr. Brodsky filed so-called inside sales reports with the S.E.C.

Q Again, referring to Paragraph 56, is it your charge that it was improper of him in any way to convert his Class B into Class A stock if he wanted to?

A As far as that is concerned, no.

Q And was it in any way improper for him, having converted the stock, then to sell it?

A You want a yes or no answer?

Q Yes.

A Repeat the question.

MR. WILLIS: Please read the question.

(The question was read)

A No.

Q In Paragraph 54 of the amended complaint--

A By the way, I want to say as yes or no that my answer is no. But there are certain considerations--

Q I am not interested in the considerations.

A All right.

Q Referring to Paragraph 54 of the amended complaint, relating to the data bank licenses, you refer to the fact that the asset was carried as cost on 3i's balance sheet. Is that correct?

MR. WILLIS: Referring to Exhibit 9, referring to one of the documents which have been marked Defendant's Exhibit 11, Mr. Felton has produced a part of the balance sheet of 3i Co as of the close of its fiscal year, 1970.

Q I call your attention, Mr. Felton, to the asset marked "Data bank licenses, at cost" and the figure $1,026,606.

A All right.

Q Is it your contention that that figure is wrong?

A By the way, just so -- this appears in other places. I just pulled that particular sheet out to

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show you.

Q Yes. I understand.

A But you are pointing to this. Why don't we have this marked as a separate exhibit?

Q It is already part of Exhibit 11.

A Is it wrong? Yes.

Q What should that figure have been had it been stated correctly according to your investigation?

A Sir, to analyze that question you could either employ hindsight or foresight. Applying hindsight it would be or should have been $150,000 plus 7500 shares and whatever the price of those shares was when Mr. Von Eugen was given those shares outright by 3i. That is as far as hindsight is concerned.

Q What did your investigation disclose 3i gave in return for the data bank licenses?

A At the end and in the final analysis $150,000 plus 7500 shares to Mr. Von Eugen and based on the 3i 1972 10K, my interpretation, stockrights, 16,666 shares, which either expired or were not presently executable. And if executable-- I withdraw that. I was mistaken. Not presently executable -- not executable according to the 10K. When I said if executable, it was only because the 10K discusses this transaction, the '72 10K

in tow various parts, the one part showing the writeoff and calling of stock rights and in the beginning, I believe, the beginning or some otherportion of it, talking about this very misleadingly at different situations. As amatter of fact, the 10K itself, in referring to 7500 shares, I don't believe even identified Mr. Von Eugen. It had some phrase -- it was a very difficult thing to really get into it and determine that the way it is drafted.

(Continued on page 293)

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(Discussion off the record.)

Q This excerpt from the annual report refers to a Note 1 to the financial statement.

Do you have that here?

A Yes (handing document to Mr. Willis).

Q Mr. Felton, according to Note 1, the consideration for the right granted by Excerpta Medica --

A Are you quoting verbatim or paraphrasing?

Q I am paraghrasing up to that point. Now I will quote. "...is $1,000,000 including 46,666 shares of Class A common stock issued in October, 1969..."

Was the stock referred to transferred to Excerpta Medica?

A First, I would like to point out the word "including."

Q Could you first answer my question?

A And secondly, I would like to say I don't know. It is one of the subjects of my inquiry in discovery.

Q It also says in Note 1 that 30,000 shares of Class A common stock to be issued on December 1, 1970 were also to be transferred to Excerpta Medica.

Do you know whether these shares were given?

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A Will you repeat that question again, please? These 30,000 shares, is that what you got out of that? It is very interesting.

Q Let me read the entire sentence.

A It is your understanding. Thank you.

Q I am asking you questions.

A You paraphrased what you read.

Q Let me read into the record the entire sentence which is in Note 1 that I am referring to.

"The consideration for this right is $1,000,000 including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971."

Is that statement inconsistent with the facts as you know them to be?

A Was your previous question that the 30,000 shares were held by Excerpta Medica as well? That is your understanding.

Q Will you please answer the question instead of filibustering?

A I am not filibustering and I move to strike

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your colloquy once again.

What I am saying is that this particular Note 1 was very artfully drawn. The 30,000 shares were issued to Mr. Fred Von Eugen, supposedly, and that was the subject of what I previously said was the 10 K -- '72 10 K, referring to these stock rights, where Mr. Von Eugen was given 7,500 shares of stock in exchange.

Q Are you finished?

A Yes.

Q Are you in a position today as a certified public accountant which you told us you were to say that the financial statement of 3i as of June 30, 1970 as reflected in its annual report and certified by Main Lafrentz & Co. was at that time false and fraudulent?

A Not as a CPA.

Q As a CPA?

A Not as a CPA.

MR. WINN: What does that mean?

A Would you like to know why?

Q I would take it you would not be able to make that statement?

A I said as an individual.

Q Would you explain how you would be able to make it as an individual but you would not be able to make it if you were using your accounting knowledge as a certified public accountant?

A As you recall in a conversation yesterday, that you discussed my testimony yesterday about my background as a public accountant.

I told you I was not a practicing certified public accountant. I passed my exams and worked three years for an accounting firm. I have not practiced accounting since that time, even though I have renewed my license every two years. I am proud of the fact that I am and I was able to pass those exams.

But I never, during the time I worked in accounting, ever worked on the preparation of a 10 K or an annual report for a listed company.

And, so, if you are asking me my professional opinion, I would say to you that I am not in a position to give you an answer.

However, as an individual, in this particular case a purchaser, an investor in these securities, when I looked at this report after Mr. Nissan sent it to me, in the light of what I learned after my investigation,

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I am in a position to say that this was false and misleading.

Q Are you saying that the 1970 financials of 3i were not prepared by Main Lafrentz in accordance with general accounting principles?

A What was your question?

MR. WILLIS: Read it back.

(The question was read.)

Q I meant that to say generally accepted accounting principles.

A I don't know if Main Lafrentz prepared the financial statement for 3i. I think they rendered an opinion and gave a certificate, but as far as I know I have no information that they prepared the financial statements.

Q Are you challenging the Main Lafrentz certificate?

A Yes, of course. And I am challenging the financial statements, but I have no information at my disposal that says that Main Lafrentz -- in answer to your original question -- prepared the financial statement. They may have prepared the note as part of their certificate, but certainly not the financial statement. I am sure that was the

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of 3i Company and its internal staff.

Q. Are you charging that the certificate of Main Lafrentz that it certifies that the financial statement conformed with general accounting principles was false?

A Repeat that question.

(The question was read.)

A I am charging that Main Lafrentz's certificate was false and misleading; whether it conformed to generally accepted accounting or auditing procedures, I reserve for the opinion of experts.

Q Do you have any personal knowledge that Mr. Brownstein or Marine Midland knew that the Main Lafrentz certificate was false and fraudulent?

A Where is Note 1, please?

(Document handed to the witness.)

MR. KUHN: We ought to mark those two documents that you have been referring to as defendants' exhibits so we will know what we are talking about.

MR. WILLIS: All right. Let's mark as Defendants' Exhibit 12 the portion of the financial statement bearing Note 1 which was previously a part of Exhibit 11.

MR. WINN: That is 1970?

MR. WILLIS: Yes. We will mark the 1970 balance sheet from the 1970 annual report as Exhibit 13.

(Document entitled "31 COMPANY/INFORMATION INTERSCIENCE INCORPORATED, NOTES TO CONSOLIDATED FINANCIAL STATEMENTS" was marked as Defendants' Exhibit 12 for identification, this date.)

(Document consisting of the balance sheet from the 1970 annual report was marked as Defendants' Exhibit 13 for identification, this date.)

MR. FELTON: Will you repeat the question, please?

(The question was read.)

MR. KINEN: I am objecting to the form of the question. You are assuming something.

MR. WILLIS: Let me reframe it, then.

Q Assuming the accuracy of your answer, Mr. Felton, that the Main Lafrentz certificate was false and fraudulent, do you have --

A Not completely so.

Q Partially so?

A Yes.

Q Do you have any personal knowledge that Marine Midland or Brownstein knew of such falsity?

A Only on the basis of what I determined from the Exhibit 8, the report that you gave me that I have in hand which is Mr. Brownstein's report of May 17, 1971.

Q Would you look --

A Page 5 is his summary of the transaction, plus, also, what I previously commented on, plus, also, his failure to state the remainier of Note 1 regarding -- where is that?

(Document handed to the witness.)

A -- where it said, "During the second half of the fiscal year ended June 30, 1970, the Company commenced marketing its services in connection with the data bank licenses acquired during the year, and had not realized any significant amount of revenues from these services. Accordingly, the Company has not begun to amortize the acquisition costs of these rights and has deferred the determination of its policy in regard to the amortization."

Q Is it your testimony that Note 1 which you were reading from Exhibit 12 accurately sets forth

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the transaction with Excerpta Medica or not?

A No, it does not.

By the way, firstly, there were two agreements up to this time. Firstly was the fact that the original agreement was never presented in Note 1.

Secondly, that in the notes to the 1969 10 K which I looked at there was something to the effect that they had not even decided at that time how they were going to treat the entire transaction.

There is no reference here to the original agreement. There is no reference here to the agreement with Mr. Fred Von Eugen. This has been artfully drawn in such a way that there is no indication that there were three parties to this agreement. That is, 3i on one side, Mr. Von Eugen and Excerpta Medica Foundation.

As you yourself in reading it with your expertise assumed that 30,000 shares were also owned by Excerpta Medica. There was no adequate explanation of this entire transaction.

Also, there was no indication that this stock was not available for sale at the time the transaction was made, even "including 46,666 shares of Class A common stock issued in October, 1969..." There should have been some indication of what these shares really

represented, and "which the Company can be required to purchase at $15.00 per share in October, 1971," which, incidentally, was never presented. My investigation shows that it was never presented to the company for purchase in October, 1971.

For that matter, following that in Note 1, the 30,000 shares of Class A common stock to be issued on December 1, 1970, "which the Company can be required to purchase at $5.00 a share in July, 1971." That never was required of the company, as far as my investigation shows.

And that 30,000 shares characterized as stock rights, and in 1972, pursuant to my investigation and the holder of this stock or stock rights received 7,500 shares.

Q In your complaint you charge that Mr. Brownstein engaged in acts and practices which operated as a fraud on you.

Apart from Mr. Brownstein's authorship of Exhibit 8, is there any other act or practice of Mr. Brownstein which operated as a fraud on you?

A You mean aside from what I consider misleading, false, and/or false statements that I have outlined before?

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Q In Exhibit 8.

A Yes.

Q Is there anything apart from Exhibit 8 that Mr. Brownstein did which operated as a fraud on you?

A Yes.

Q What else did he do?

A The so-called, you characterized it on Mr. Brownstein and Marine Midland Bank as a company report, it was published by Mr. Brownstein. As I testified, published at least to Mr. Falk.

Q I have excluded the report. I am talking about his acts. Written and distributed Exhibit 8.

Aside from that, has he done anything to cause any fraud on you?

A Yes.

Q What else?

A By his actions in this regard and with his reckless approach to this report, the fact that he knew or should have known an intelligent approach to his analysis and the fact that this report was published to a third party, and I have not had the opportunity to find out to whom else he caused the price of the stock to soar.

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At the date this report was prepared --

Q Mr. Felton --

A You asked me about the fraud.

Q I am asking you a very simple question and you are just going around in circles endlessly.

A I am referring to the report. The recent price was $13 on May 17, 1971, and I paid $20 for those shares on June 7, 1971.

Q Again, Mr. Felton, apart from the report, Exhibit 8, and the statement contained in it or should have been contained in it, was there any other act or practice by Mr. Brownstein which operated as a fraud on you?

A I believe, subject to discovery, that there may be a need to amend this complaint to include insider transactions by Marine Midland Bank and its system and Mr. Brownstein, aside from insider transactions by Walston & Co. I have not included that in my complaint but I don't have the facts, but on the basis of insider transactions I consider Mr. Brownstein on his admissions to the amended complaint as having access to 3i Company, either a tipee or having access as an insider, so I don't know. I am reserving that part of my answer to after discovery.

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Q You are again reserving yourself the right to further amend your complaint.

But as of the present moment, on the basis of your investigation to date and what you know, is there any act or practice of Mr. Brownstein which operated as a fraud on you, other than Exhibit 8 which you characterize as misleading and false statements, and its failure to contain material which you think is of significance?

A What I wanted to say is this. I don't quite understand your question. If I am not answering it along the lines you want, please tell me.

But not only the report, but the fact that he discussed the finances with Mr. Nissan prior to preparation of the report; that he informed Mr. Nissan he was preparing a report, and Mr. Nissan was a registered representative of Walston & Co. and made a market in the stock and Mr. Nissan was a purchaser of the stock; that he discussed the finances with Mr. Brodsky and advised Mr. Brodsky that he was preparing the report; the fact that Mr. Brodsky was at that time selling stock in large blocks also acted as a fraud upon me.

Q Anything else? Anything el

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A This is based on my information and belief.

Q As of the moment?

A Based upon my investigations and my considered opinion.

I have not talked about ~~Maurice~~ Mr. Brodsky.

Q I have not talked to you about him.

A I am alleging a conspiracy including ~~Maurice~~ Mr. Brodsky.

Q I am just asking you what act Mr. Brownstein performed that operated as a fraud upon you, and you indicated Exhibit 8, and you also indicated that he had a discussion with Mr. Nissan and Mr. Brodsky.

Is there anything else?

A It may very well be discussions. I didn't say discussion.

Q Is there anything else that Mr. Brownstein did that operated as a fraud upon you?

A Other than causing the stock to take off at a high rate and causing me to purchase, as part and parcel, and to induce me to purchase on June 7, 1971, no.

Q There are several open matters, two open matters which I have, Mr. Felton. The yellow sheets which you are going to produce and the agreements with

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Excerpta Medica which you have.

A Right.

MR. WILLIS: Subject to those matters, I have no questions at this time.

(At this time, there was a brief recess.)

EXAMINATION BY

MR. RICHARD W. LYON:

Q Mr. Felton, in response to questioning by Mr. Willis, you have testified regarding your familiarity with the law relating to the federal securities laws.

I would like to ask you what familiarity you have with the law relating to class actions in the federal courts.

A You mean Rule 23?

Q What do you know about Rule 23?

A Basically, Rule 23 has its origin in the accomplishment of having numerous cases tried in one forum to allow for small stockholders or other investors or plaintiffs to have adequate representation of their rights where there are common questions of law and fact that predominate; that if there are different and varying degrees of reliance that should not be a stumbling block to a class action; that a class action

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motion must be made within a certain period of time and that there are certain criteria for determination of a class action.

I know that there have been a number of important cases on class actions, including Eisen, the recent case where there were I believe hundreds of thousands if not millions of small shareholders where it was ruled by the court that class actions were not feasible but where there are thousands of stockholders, where their identities are readily determinable, that if there are common questions of fact and law that are predominant, that a class action should be ordered.

Q What is the function of having adequate representation of the class in a class action?

A What do you mean by the function?

Q What is the purpose?

A I don't quite understand.

Q What is the purpose of having a person before the court who is an adequate representative of the class?

A Once again, common questions of fact and law. It has to be a responsible plaintiff, someone who has a substantial position, who is not only taking upon himself the class but also has an interest himself.

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The law provides that even if there is only one plaintiff, the rule provides, that if there is only one plaintiff, that plaintiff can represent a class.

Q What are the consequences for the members of the class if the class representative does not in fact adequately represent them?

A Firstly, the class motion will provide for notice and the notice to the individual members of the class will give them the right to opt out. That is, to give them the right to opt out because of the due process that is involved, representing them.

Obviously speaking, representation of a class is important in the sense that the representative is in a fiduciary relationship to the class.

This is the reason why these matters are settled before the court. My understanding is that the court divided the matter into two parts toward the end; first, a determination as to the merits and then a determination as to damages.

Now, if you recall, when I spoke to Mr. Willis yesterday I offered to present the bond awarded by the court.

Q I am sort of intrigued by that. Let me ask you this. Do you propose to pay for the cost and

notice to the class?

A Do I propose to pay?

Q I take it if there is notice to the class, some person or persons will have to be paid to perform functions in connection with the issuance of that notice.

Do you propose to pay them?

A Who else? I don't understand your question.

Q Will you pay for the cost of notice to the class?

A Will I pay for notice to the class? Who else is supposed to pay for it?

MR. WINN: Don't argue with him. Answer.

Q If this is declared a class action, do you agree to yourself pay for notice to the class?

A I agree to this, that if this is a class action and we determine the class, then I agree to have every member of the class notified of the class action so that he has the opportunity to opt out.

Q Do you agree to pay for it?

A I agree to have the facilities of my office available, or any other means to get every member of the class notified of this class action.

Q Have you made any estimates of the aggregate

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amount of losses of the class members who you purport to represent?

A I believe that, as I indicated yesterday, considering the fact that there was a thousand or so stockholders at the end of '69, the beginning of '70, and that in 1972 there were nineteen hundred stockholders, and Mr. Ryan had told me two thousand, but that was an approximation when he spoke to me, nineteen hundred.

And also in view of the fact that the shares outstanding traveled or climbed from a million, four or a million, two to either two million, four or a million, two to two million, two. A million shares in a two-year period or so.

What we have here is a distribution, and based on the price change of the stock from $4 and three-quarters in July of 1970 to a high of just under $25 in the summer of 1971, down to a value of somewhere in the neighborhood of $0.25 right now, that the losses here may be as high as $15,000,000.

Q Are there any documents that you have used in estimating the size of the class or their losses? I believe you referred to one or two documents yesterday in answer to a question by Mr. Willis; is that right?

A I referred to several of the 10 K's.

Q Other than the material appearing in the 10 K's, is there any other written material that you referred to in estimating; the class as you do in the complaint?

A I believe I said the class and the losses, too, in the previous question. Now you are talking about the class. Which is it?

Q Either.

A I think you should split them up.

Q The size of the class, the number of people in the class.

A The number of people in the class is an estimate. I believe I indicated so in my complaint.

Q I am asking you what the basis for that is.

A The estimate?

Q Yes.

A As I indicated to you yesterday, there were no figures available for activity in this over-the-counter trade, but in view of the push of this price upward, plus the fact that there are presently nineteen hundred stockholders, and based upon my investigation, I am sure that most of the original stockholders got out of that revolving door sometime during the rise and

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before the fall of the stock, and all the other people who were in for short terms, including, as I indicated, my friend, then I considered eight thousand as a pretty conservative estimate.

Q You testified that most of the cases you have handled have been settled; is that correct?

A Yes. By the way, Professor Bromberg indicated, which I didn't have a chance to tell Mr. Willis, that most of class actions are settled, as well.

Q Do you know what is required in order for a class action to be settled?

A What do you mean?

Q What is required in order for a class action to be settled?

A An order of the court.

Q Do you intend to apply for a fee to come out of any settlement or any judgment which might be awarded if this case is considered a class action?

A I am keeping a record of my disbursements, my expenses, and I am keeping a record of my time, sir.

Q Do you intend to apply for an attorney's fee?

A Yes.

Q If this case is determined to be a class action?

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A Yes. I am represented here as plaintiff and plaintiff pro se.

Q What percentage of adequate recovery, if any, do you intend to apply for as a fee?

A It depends on a number of factors. As Mr. Willis suggested yesterday, this trial may take years. There are a number of factors, as far as the relative success, if, hopefully, as I anticipate, the settlement will be in the nature of what I believe it to be, there are a lot of variables here.

I know this, that part of the application of the fee, for the fee, is the amount of hours and days spent. But there are other things.

For example, I read the recent determination of fees by Judge Bonsil in the Texas Gulf Sulphur cases where he talks of the expertise of the attorneys.

These are the things that are subject of an application. It would be impossible and unfair for me to say at this time what I would request.

All I say is this, that I feel that a wrong has been done by a number of these defendants on this class, and I feel that I have the burden of righting this wrong. So I am looking for money damages to do this.

Q You are also looking for a fee for yourself,

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aren't you?

A I certainly am.

Q That was part of the motivation for you making this suit a purported class action, was it not?

A May I say this in answer to you. I could not afford the time it would take on this particular case if I didn't have this in mind. That is one of the main purposes of Rule 23, which I said before to you when I said that small stockholders will have adequate representation for their rights. That is the purpose, one of the mainstays, in my opinion, of Rule 23.

I am here today, the second day on this deposition, and I hope to finish this as quickly as possible, but I am at your disposal, and this is what I meant.

Q You agree if this case were permitted to proceed as a class action and notice went out to the class that this notice would tell the class action that you intended to apply for a fee out of any recovery that was obtained?

A Yes. And if any of the class members wanted to join, they certainly would be welcome.

Q By the way, did you tell Mr. Falk or your brother that you intended to represent their rights

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in this action?

A I told them I was instituting the class action. I believe that my brother and Mr. Falk are knowledgeable enough to know what that means.

Q Did they express any interest in the class action that you proposed to institute?

A Yes and no.

Q What do you mean?

A Mr. Falk, in view of the fact of his own interests in the security business, no; my brother, yes.

That doesn't mean that I plan at this time to institute a suit in his behalf, or that he plans to hire an attorney.

At the same time, my brother has sustained some losses in this particular stock, and my brother is a case in point. I believe my brother's stockholdings are under a thousand shares. There is a perfect example of what I meant by a small stockholder stuck with worthless stock where he would not otherwise be in a position to be compensated for his losses.

Q With whom does your brother have an account?

A I want to say one other thing. One of the mainstays of 23 is therapeutic procedure, as far as this whole approach is concerned, and frankly, Mr. Willis never

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asked me this question. But Mr. Nissan never told me he was sorry.

Who my brother purchased this stock from?

Q Yes.

A I don't know.

Q He was not a customer of Mr. Nissan's?

A I don't believe so.

Q You have mentioned in your previous testimony that you followed the Four Seasons class action litigation.

A Yes.

Q In what manner did you follow it?

A I read the complaints.

Q Which complaints?

A By the way, I am glad you asked that. There is something I wanted to clear up with Mr. Willis.

Mr. Willis talked about the fact of my complaint in the --

Q Please answer my questions, and you can put any other statement in your brief.

A I just wanted to have one point that I wanted to point out because it has to do with the Four Seasons matter. I was thinking about it.

The fact of the matter is this, that when you have

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multiple plaintiffs, as you had in the Four Seasons case, and multi-district litigation, as you have in the Four Seasons as well as you had in the Equity Funding case, and where a plaintiff's case, such as mine, was instituted, I think mine was in the Equity Funding, somewhere in the first ten cases, when he said to me if he brought in my complaint would it be an exact copy of any other complaint, the point I didn't get to say to him which I am going to say now is that in view of the fact that basically what you have when you have multiple plaintiffs is the need to have an exact approach by everybody as far as allegations of fraud, in some respects there are certain paragraphs in my Equity Funding case which are an exact copy of other complaints which are in point.

As far as the Four Seasons Nursing Home cases, I don't believe -- all right, yes, I did read it, to a certain extent.

Q Who did you talk to about the case?

A As far as talking is concerned, I didn't really talk to anybody. I read some of the newspaper accounts. This is later, of course.

Q I just want to know whether you know Ira Sand.

A Yes. I didn't talk to him at the time.

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Q How long do you know him?

A Since the Equity Funding case. Ira Sand was one of the members of plaintiffs in the Equity Funding, representing one of the plaintiffs in Equity Funding.

Q Have you discussed this case with him?

A Generally.

Q When was the first time that you spoke to him about this case?

A Within the last month.

Q Was that in a telephone conversation?

A Yes, sure.

Q Did you call him?

A No. He called me. Something relating to Equity Funding.

Q What was said about this case or about 3i in the course of that conversation?

A I didn't even tell him it was 3i. I gave him a set of facts and asked him what he thought of the case, the various features. I didn't think it would be fair to the class to discuss the case with another attorney unless I was in a position where I was going to call him into the case as co-counsel, or for any other situation.

I will tell you, frankly speaking, in view of

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what I consider to be my fiduciary position in this case, I have been very, very careful to do everything properly as far as the class is concerned.

As a matter of fact, when Mr. Willis gave me the report which is Exhibit 8 and at the end of the day asked me if that was the report that Mr. Falk brought to me, I was not sure, especially in the fact that Mr. Willis didn't want to tell me that there was another report.

My natural inclination on the way home was to show the report to Mr. Falk and ask him what he thought of it, what his memory was, but I didn't do it.

For that matter, I have not taken any statement from Mr. Falk or from Mr. Einhorn.

Q Have you discussed with Mr. Sand or any other attorneys the possibility of their participating in any way whatsoever in this case?

A No. Why would I want to do that?

Q You previously testified in this deposition with respect to conversations which you had with Mr. Nissan in connection with each of your transactions and in addition to conversations you had with him at other times.

A To the best of my recollection.

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Q That is my question. I just want to confirm now that the testimony you have given as to what was said in those conversations represents your best recollection.

A That is all. The gist of them.

Q Does it constitute your best recollection as to what was said in those conversations at the present time?

A Yes.

Q Are there any other conversations that you have had with Mr. Nissan as to which you have not testified in this deposition?

A With regard to 3i?

Q Yes.

A I am sure. I just told you the cogent points that come to mind. I tell you frankly, Mr. Nissan handled my whole account at that time, and frankly speaking, I spoke to Mr. Nissan quite often because there were, unfortunately, a lot of situations that Mr. Nissan advised me that didn't work out well. And there were times that I spoke to Mr. Nissan twice a day.

Q Is there anything that Mr. Nissan told you about 3i that you have not told us about in this deposition?

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A Yes, there is. And I will tell you when it was.

Q Please do.

A It was sometime during that conversation when he told me that he couldn't recommend the stock.

MR. WINN: He could not?

MR. FELTON: He could not tell me what to do. This was in 1973 when I asked him whether to buy more stock.

Q When in '73?

A It might be late January or February. There were a number of margin calls I was getting at the time.

Q Go ahead.

A And he referred to 3i as a dog.

MR. WINN: He told you 3i was a dog?

MR. FELTON: Yes. He said, "I can't talk about that dog."

A This is something I recall at this moment.

Q That is your best recollection of what he actually said?

A The gist of what he said, but that word he said.

Q When you say "gist" during this deposition, you mean you are giving us your best recollection at the present time?

A The sentence structure is gist, but the word "dog".

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he said.

Q Did you have any response to that?

A Emotionally or with words?

Q Words.

A No. Emotionally, on the other hand, I was very upset.

Q Is there anything else that Mr. Nissan told you about 3i which you have not told us during the deposition?

A If it was, I don't recall. I didn't keep a catalogue of our conversations during the time I was purchasing the stock. These are just some of the high points that I have covered in my testimony.

Basically speaking as the stock was going I was happy with it, because I felt that this was a special situation which was going to appreciate in value and be worth something to me.

Q You say that your house is held in the name of both yourself and your wife?

A Yes.

Q Have you spoken to her about the possibility that you might have to mortgage it or re-mortgage it in connection with this case?

A I say this to you. I used the term "emotionally"

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yesterday. Basically I don't anticipate that type of expense in this case. It was an emotional reaction to Mr. Willis and it is completely out of keeping with what I consider the possible costs of this case to be.

The major part of the cost of this case is the time to me, as far as I am concerned, getting the notices out and conducting the discovery. The biggest cost of this case is not the question of mortgaging houses. It is a question of having the time to devote to the case, to be able to establish the points of law and facts which will prove the case.

Q Have you ever had any conversations or any oral or written communications with anyone employed by Walston, other than Mr. Hissan, respecting 3i?

A No.

Q Was the 3i which was held in your account at Walston held in street name or in your name?

A The stock was fully paid for.

Q Do you know whether it was held in street name or not?

A I don't know. It is held at Walston & Co. and it is contained in the position section of my monthly statement.

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Q Mr. Felton --

A Excuse me. I think that it would be in my name if I requested the stock to be sent to me, so I assume it is being held in Walston's name.

Q As I understand your testimony, you have nc recollection or no specific recollection at this time of having received any written material regarding 3i prior to at least March of 1971; is that correct?

A I said I might have.

Q That is why I framed the question as I did. You have no specific recollection --

A Fine, yes.

Q -- of having received any written material before March of 1971; is that correct?

A Yes.

Q You don't deny that you may have received some by virtue of your status as a shareholder in 3i or otherwise prior to March 1971?

A This is connected with your previous question. If the stock was held in Walston's name and not mine, 3i might not know that I was a stockholder to send me the annual report. Perhaps that is the reason why I never saw it.

Q Do you recall ever having any material on

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companies in which you held stock forwarded to you by Walston?

A What we are talking about now is not a fair question. You have now established the procedure as to how 3i mailed this annual report.

Q I have not established any procedure. I will rephrase my question.

Is it possible that you received material on 3i from Walston subsequent to the time that you first bought the stock?

A I did. Mr. Nissan had it sent to me.

Q Prior to that, I know your previous testimony referred to another copy of the annual report.

A I didn't say. I said it might have.

Q I inferred from that that you might have had a copy of it prior to that time.

A No.

Q Is it possible?

A Is it possible? It is possible, but at the same time now in reflecting on it, and what you have suggested to me rang a bell in my head, when you said Walston forwarded, that the reason perhaps why I never saw it is because of the fact that if I ever got any reports -- I mentioned that I have the stock that I am

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still holding. It is Rapid American. It is in my name. The reports come to me frequently from Rapid American.

Are you suggesting that Walston sends reports?

Q I am not suggesting anything. I asked a question. And now I will ask another one.

Did you ever ask for any written material on 3i?

A When?

Q At any time prior to your conversation with Nissan as a result of which he sent you the annual report?

A No.

Q At any time prior to March, 1970?

A No.

Q Is it your policy not to ask for written material?

A It is my practice to watch the stock movement every day.

Q You testified that you followed 3i.

A Not every day, but periodically.

Q What do you mean by that?

A I said every day. But there were times I did follow it every day when I became a little apprehensive because of the price movement.

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Q What do you mean by "follow it"?

A What do I mean by that?

Q Yes.

A When I purchased it at 4 3/4ths in July of 1970 I was not watching it as closely as later on when I was getting ready to sell it.

Q What do you mean by follow it? What did you do in order to follow it?

A I don't recall in 1970 -- the procedure changed as far as publishing the figures is concerned. I will tell you what it is.

In the paper, for a while, certain over-the-counter stocks were only reported on a weekly basis, and then they were reported on a daily basis.

Q When you say "follow it," are you referring exclusively to following the price of the stock?

A Yes.

Q And where would you look in order to ascertain what the price of the stock was?

A That is what I am driving at.

Q Let's begin with July of 1970.

A I don't recall. I don't recall if it was a weekly reporting. I think, to begin with, in July it was a weekly reporting. The only way you could

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see it was on Sunday in Barron's. This is my recollection now. This is a long time ago.

Q Have you ever looked in pink sheets?

A Yes.

Q Did you look for 31 in the pink sheets?

A Yes.

Q Do you recall finding it in the pink sheets?

A Yes.

Q Do you recall about when that was?

A When I first looked?

Q Yes.

A I don't recall, no. I didn't look at the pink sheets too often. If you recall, I said that I was in a stock brokerage firm the day I found out the stock took the precipitous drop.

At that time there was a machine, I believe, where you could push a couple of digits or letters or whatever it is, and get a quote.

That is how I determined the price at that time.

Q Did the annual report for 31 for 1970 confirm what Mr. Nissan had told you about the company?

A Mr. Nissan didn't talk about the company at that point when I referred to the annual report. He was talking about the European data bank, and he told me

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that the report would explain it to me.

Q When did you first learn that 3i was a new business, as you previously testified?

A I didn't say new business. It was certainly a few years old. I said relatively new as opposed to some business that was perhaps in existence for ten or twenty years. I meant this was a new business in the sense that when I used "new" I used the word exciting and new, in the sense -- Mr. Nissan had the ability to charm with words. When he talked about the multi-million-dollar acquisitions and taking a smaller company and really building, that is what I want to say is exciting and new. That is what I meant.

Q When did you first learn that 3i had sustained a loss? By that I mean a loss at any time.

A In any year?

Q Yes. I will rephrase the question.

Prior to seeing the annual report for 1970, did you know whether 3i was making money or losing money?

A No, I did not know.

Q Did you ever ask?

A No. Oh, yes, let me say this to you. I am sorry. I didn't ask but sometime along after I purchased it

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originally at 4 3/4ths, Mr. Nissan told me that the earnings were improving or something to that effect. Once again, the gist of it.

Whether or not at this point he discussed with me specifically what that meant, I don't know. I don't believe so. What he was talking about is that the earnings were going to improve and the stock would go to $15.

Basically speaking, perhaps that was the relationship why the stock was as low as it was when I first bought it, and why the stock was moving.

That was my understanding, based on his statement at that time, that the earnings were improving.

Q You testified that you told Mr. Nissan at the time you opened your account that you were interested in appreciation?

A Yes.

Q Can you describe in any more detail what you mean by that?

A If you recall, my brother had told me that he had a reputation of being bright, and he told me he dealt with special situations, which he watched carefully and in fact he had told me when I first spoke to him about how he had handled a stock called Extra and

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how strong a movement it had made from a small amount to a large amount, and he indicated to me that he found certain stocks, and based upon his investigation and all that he put people into them at a very good price, and whatever they paid for it they would realize a much larger sum at a later date.

So when I said appreciation, I was summarizing basically what he was saying to me by his giving me an example or so.

Q You yourself were not interested in dividends, were you?

A Mr. Nissan told me in special situations something to the effect -- again paraphrasing -- the gist of it, that the dividends in special situations are built-in, in the sense that when you have a new or a relatively new company, the dividends are foregone by the fact that money and profits are pumped in by the company into acquisitions. This was a general statement before I opened the account. By acquisitions so that eventually when the price reached a level where people realized what it was and the full potential of earnings was there, then the dividends would be there.

And, by the way, I haveindicated a number of

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transactions in this stock and it was not because of the fact that I was trading this stock. This was because of the fact of my apprehension and in view of the fact that I had losses in looking for some appreciation in the bad market of 1969.

This is borne out specifically by the fact that each time I sold at a higher price, I bought back at approximately the same price I paid.

Q In Paragraph 15 of the amended complaint you allege that Walston at all times made a market and kept an inventory in the securities of 3i.

What is the basis for that allegation?

A Well, several things. Two things.

Q Let me just ask you this. Do you have any facts to support it?

A Yes.

Q What are they?

A The pink sheets, I noticed when I looked at them several times.

Q When?

A When? I don't recall when. You are asking me if I looked at the pink sheets. Yes. I believe it was at the time when it was not being quoted on a daily basis that I would occasionally go in and look at it.

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I was following the stock fairly closely because I was apprehensive, not just of this stock but the fact is that it had made a great movement, and based upon Mr. Nissan's glowing, you know, comments, and his strenuous objections to me to sell, I saw the pink sheets and I saw Walston & Co. was there.

And also, a couple of my confirmations have that, Walston makes a market in securities, which is part of Defendants' Exhibit 7.

Q What confirmations are you referring to? You are referring to Defendants' Exhibit 7?

A Yes.

Q Where is it? You are referring to the printed statement at the top of the form that Walston makes markets?

A Not printed but typed. Yes.

Q All right.

A By the way, in that regard, I would like to ask why a number of them don't have it on there, especially two earlier confirmations.

Q What facts do you have to support the allegations of Paragraph 32?

A Your answer which you read in the record on behalf of Mr. Nissan.

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Q Prior to the time you drafted the complaint, what facts did you have to support that allegation?

A If you recall, for one thing, what I said Mr. Nissan said in late January or February of 1973 about being a principal, an insider, an investor, I should say --

Q What did he say at that time?

A Something to the effect that he couldn't talk about the stock, he could not discuss it. He could not tell me what to do -- I think I mentioned that. I don't recall the words I used yesterday, but something to the effect, when I said I was reviewing my portfolio, whether there is any more money in the margin call or not.

Q Did he ever tell you he held common stock in 3i?

A What does the "principal" mean?

Q Did Mr. Nissan ever tell you that he held common stock in 3i?

A I understand the question.

Q Can you answer it?

A The way I answer it is this. My impression of that conversation was, after I spoke to him, my impression was that he was a shareholder in 3i. That was my

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impression of the conversation. That was one of the reasons why he said he could not discuss this dog with me.

Q He never told you that he held common stock in 3i, did he?

A I would just like to refer at this moment to Defendants' 11.

(The witness examined documents.)

Q Did he ever tell you? That is a very simple question.

A I say this. My impression was of my conversation during that January, late January-early February '73 conversation, that this was my impression of our conversation, that he was a stockholder.

By the way, there is, I believe, in the SEC records which I am looking at now, some mention of Mr. Nissan's name.

Q That would not be responsive to my question now.

A You asked me how I knew he was a shareholder. I have a note here where I question it here on something to the effect that the shares -- "In addition, as of March 31, the registrant issued 50,000 shares of Common Stock, Class A, in conversion of indebtedness

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of the outstanding principal amount of $100,000. On March 31, 1972 the market price of the registrant's securities was 4.75 bid and 4.875 asked. No brokers, underwriters or finders were involved. The shares were issued to an individual who was a shareholder of the Company and who had advanced the Company $100,000 with the understanding that it could be converted into Common Stock, Class A, at $2.00 per share. The individual was a sophisticated person in the brokerage business."

There is another place where his name was mentioned.

Q I am ready to ask you the next question.

Did Mr. Nissan ever tell you he was a creditor of 3i?

A No. I believe I got that from my investigation of the SEC papers.

Q When you drafted the amended complaint, what knowledge did you have to support the allegations in Paragraph 35 that Mr. Brownstein discussed the finances of 3i with Mr. Nissan prior to the preparation of the report?

A The chain of events which I previously described and discussed with Mr. Willis.

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Q Anything other than that?

A Well, hindsight, the admissions of Mr. Nissan that this was correct, his admission.

Q Do you mean in the answer to this case?

A Yes. Basically it was a chain of events here. All that I said before, all that I previously testified to.

Q Referring to Paragraph 45 of the amended complaint, what knowledge did you have when you prepared the complaint to support those allegations?

A If you recall, I testified that Mr. Nissan told me on June 7, '71 that a major bank was putting out a very favorable report.

Q The allegations here --

A That was my memory of the way he put it.

Q You allege that prior to the time that the report was published, Mr. Nissan advised other firms, brokerage houses and individuals in the business and in the investment community of the advent of such report.

A Yes. That is what you are reading, 45. Yes.

Q What are the facts which support that allegation?

A He told me.

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Q Anything else?

A The fact is that Mr. Einhorn at that basketball game referred to Jim Nissan's stock, or something like that.

Q That basketball game was before the date of the report, was it not?

A Yes, I understand, but the idea I am driving at is that this is apparently the nature of certain -- which I learned, certain businesses, certain brokerage representatives do, for the purpose of pushing the stock up.

So the fact that somebody in an entirely different position would know that by mentioning the name of a stock, that this is Jim Nissan's or Nissen's, rather, stock, was very significant to me when I considered this amended complaint.

Q I take it that no one ever told you that Nissan advised anyone of the advent of the report other than yourself; is that right?

A I have not had a chance to speak to Mr. Nissan about it. As far as I know now it is based on the fact that it is hard to believe that Mr. Nissan would only tell me.

Q It is based on an assumption?

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A He may have told every other customer that he had.

Q It is an assumption on your part?

A As far as my dealings with him, it is a fact. As far as --

Q It is what --

A It is what I am testifying to. That is a fact to be discovered.

Q At this point, it is an assumption on your part? Is that right? It is nothing more than an allegation at this point?

A When you find something in one area that exists, it becomes a very strong assumption, more even than an assumption in view of the fact that there is dealing in one regard, as it was in my case, or stating this fact to me, in my case. It is hard to believe that he would state it to me alone.

I just want to say this to you. The complaint was prepared by me before I had the advantage of seeing Exhibit 8, and I am testifying now without any knowledge of whether or not there was another report that has not been given to me.

Q Referring to Paragraph 61 of the amended complaint, Mr. Felton, would you tell me what the

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factual basis is for that allegation?

A It is the natural outflow of the information and belief in my preparation of Paragraph 32.

Q So that your answer as to that would be the same as your answer to Paragraph 32?

A Yes.

Q Moving to Paragraph 62 --

A By the way, also refecring to the information I discovered in the SEC.

Q Moving to Paragraph 62, what is the basis for that allegation?

A That is what I read to you before.

Q May I see that document?

A But there happen to be some other points. You disturbed me going through the papers, where there was specific mention of Mr. Nissan's name.

Q Let me ask you this. With respect to Paragraph 62 of the amended complaint, is it your testimony that the basis for that allegation is contained exclusively in the documents which you obtained from the SEC and which have been marked here or will be marked?

A I just want to say this.

Q I have a question. Will you answer it?

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Yes or no?

A I spent time at the SEC looking at other pages that I didn't copy, but I took certain notes, only just a few points here.

Q Would these be pages of 10 K?

A Yes.

Q So that your knowledge respecting the allegations in Paragraph 62 is derived exclusively from 10 K's filed by 3i?

A Any of my answers regarding information from SEC is whatever information I have here and whatever else I have read.

Q Let's go to Paragraph 63.

Is there anything on which that allegation is based other than what you have previously testified to in this deposition?

A No, that is it.

Q And would the same be true as to Paragraph 64?

A Yes.

Q Would the same be true as to Paragraph 65?

A Yes.

Q I take it also as to Paragraph 66?

A Yes.

Q Moving to Paragraph 173, you allege there

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that, among other things, Mr. Nissan participated singly, acted in concert and/or in furtherance of common fraudulent combinations that Mr. Nissan engaged in acts, practices and/or a course of business which operated as a fraud on plaintiff and the class; that Mr. Nissan participated singly and acted in concert and/or in furtherance of fraudulent combinations; and that in furtherance of fraudulent combinations, Mr. Nissan with intent to deceive and/or defraud plaintiff and the class discussed the finances of defendant 3i Company with defendant Brownstein prior to defendant Brownstein's preparation of a report on defendant 3i Company and advised other firms, brokerage houses and individuals in the business and investment community of the advent of this report.

A You are phrasing this.

Q No, I am reading.

A You are skipping.

Q I wish you would read it, and when you finish reading it, my question with respect to that paragraph is simply this: are there any facts, or is there anything on which the allegations in that paragraph respecting Mr. Nissan are based, other than

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what you have already testified to in this deposition?

A Subject to my own discovery and interrogatories here, I would say yes.

Q What do you mean by that? Do you have --

A What I mean is, I believe that a great deal of the information here -- a great deal of information in the possession of Mr. Brownstein and Mr. Nissan, Walston & Co. and Marine Midland.

Q What you mean is you have told us all that you know now, and you are relying on discovery to establish whatever else you might establish? Is that right?

A Basically, yes.

Q Is that also true for anything which might support the charges in Paragraph 177?

A Just coming back to your previous question, I have not really discussed or testified to what I consider to be more or less Mr. Nissan's relationship as an insider or tipee in view of his admitted acquaintance with Mr. Brodsky, which, as I said before when I indicated to Mr. Willis, I plan to allege this in an amended complaint after it is determined by investigation, or the deposition of Mr. Nissan

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in this regard.

Q Do you have any facts to support that charge or anything in this complaint other than what you have told us in this deposition?

A No. The admissions of Mr. Nissan, the fact that he knew Mr. Brodsky and discussions with Mr. Brownstein. Mr. Brownstein admitted that he knew that Mr. Nissan knew Mr. Brodsky.

MR. RICHARD G. LYON: I will object to that unless you can point to something in our answer that supports that statement.

MR. FELTON: Paragraph 63. "Defendant Nissan at all times herein mentioned was acquainted with the defendant Brodsky."

What was your answer in behalf of Mr. Brownstein?

MR. RICHARD G. LYON: The allegations of Paragraph 63 were admitted on behalf of defendant Brownstein, and I will withdraw my objection.

A What I am basically looking for in my deposition is --

Q I don't think this is responsive to any question.

A All right.

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Q I believe you have testified that Mr. Nissan at one point in 1971 told you that he was in contact with the management of 3i; is that correct?

A At several points in 1971.

Q Also that he expected that the earnings of 3i would be in the black for fiscal 1971?

A Yes.

Q Did you have the impression at that time that you were receiving information which was not available to the general public?

A No.

MR. RICHARD W. LYON: I have no further questions.

MR. KUNEN: I am going to go on for about fifteen minutes until 4:00 o'clock, and then we will take you up the next time, whenever that is.

MR. FELTON: I am staying until 5:00.

MR. KUNEN: You can stay as long as you want. You didn't stay until 5:00 yesterday.

MR. FELTON: I was told there was a stipulation asked for by Mr. Lyon and he said that he had made commitments in the afternoon.

MR. RICHARD W. LYON: Let's go off the

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record.

MR. FELTON: I don't want to kill another afternoon.

Off the record.

(Discussion off the record.)

MR. KUNEN: Mr. Felton, I am going to ask just two or three questions now, and then we shall adjourn your deposition to some date next week which will be agreeable to everybody here.

MR. FELTON: May I ask you one question with regard to that? Will you be here tomorrow when I question Mr. Brownstein?

MR. KUNEN: Yes.

MR. FELTON: Why can't we finish me right after we finish Mr. Brownstein?

MR. KUNEN: I don't know how long I will be with you. I will be here for Brownstein's examination, and I am going to examine you some day next week, any day that is convenient for you.

MR. FELTON: As soon as possible.

MR. KUNEN: As of now, I don't intend to examine you, but I will discuss it with my client.

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MR. FELTON: It should be in close proximity; otherwise it would be cross-examination. It will be sometime before these transcripts are transcribed.

MR. KUNEN: We don't know when it is going to be transcribed.

MR. FELTON: As long as you don't refer to the transcript or have them transcribed in your possession when you ask me the questions.

MR. KUNEN: It is perfectly all right. I will remember what you said.

MR. WINN: If I examine you, I will examine you at the same time.

MR. FELTON: And no later than next Friday.

MR. WINN: At your office?

MR. KUNEN: Yes. You can come to my office.

MR. FELTON: Hopefully right after we finish the examination of Brownstein.

MR. KUNEN: I am prepared to examine you next week.

MR. FELTON: Or even if I don't have that many questions tomorrow afternoon.

MR. KUNEN: I don't go on tomorrow afternoon.

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MR. FELTON: I see.

MR. WINN: You understand that?

MR. FELTON: Off the record.

(Discussion off the record.)

MR. FELTON: Mr. Kunen, in view of the fact that it may be difficult as to where it will be held and all that, I would just as soon you completed my examination first and then Mr. Winn, and then we can continue with Mr. Bronnstein.

MR. KUNEN: Tomorrow afternoon at 2:00 o'clock we will meet at my office.

MR. FELTON: The order says 1306.

MR. WINN: We don't have to examine you. We are invited to attend.

(Discussion off the record.)

MR. KUNEN: It is understood that I will ask you a few questions and then we will continue tomorrow at 2:00 P.M.

MR. FELTON: All right. Go ahead.

EXAMINATION BY

MR. KUNEN:

Q Mr. Felton, there has been marked on this

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examination Exhibits 13, Exhibit 9 and Exhibit 12, and these are documents, I take it, that you obtained from the files of the SEC, photostats of documents?

A These are some of the documents I referred to out of other documents which have been marked Exhibit 11 which I obtained by photostatting some of the pages of the files of the SEC in Washington and in New York.

Q Will you please add to those documents from the document that you have in Exhibit 11 the additional notes to the company's financial statement of November 20, 1970. That is the date of the certification.

Mr. Felton, you have handed me a document which you have taken from Exhibit 11. That is, the papers that you Xeroxed from the SEC files, which is marked 3i Company/Information Interscience Incorporated Notes to Consolidated Financial Statements.

MR. KUNEN: Please mark it.

(Document above described was marked as Defendants' Exhibit 14 for identification, this date.)

Q I take it that Exhibit 13, Exhibit 9 and Exhibit 14 in order constitute the June 1970 financial

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statement of the company as certified by Main Lafrentz's certification and the notes to the financial statement; is that correct?

A Without a complete identification on Exhibit 14. What I mean by that is other than the fact that it looks like the same size page as Exhibit 13 and Exhibit 9. I would say it is apparently so.

Q Let's assume that, and if we find any change --

A There are notes to the consolidated financial statement which we marked Exhibit 12 for identification which may be part of the 10 K which I was referring to before in my direct testimony.

I have not had a chance to read both of them carefully to see if there are any changes in the wording, in the typing, but it would appear that the one that you just marked for identification as 14 would be part of the annual statement.

Q This statement as at June 30, 1970, was this attached to an annual report of the company?

A Attached?

Q Part of it.

A It is part of the annual report.

Q Do you have the annual report?

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A I don't.

Q Did you see a copy of the annual report when you went through the SEC files?

A It is all microfilmed. That is why it is difficult to identify, as it exists here. They use the term microfiche, f-i-c-h-e, where they are able to put somewhere in the number of pages on one card which you have to use a viewer to view, and a special photostat machine to photostat.

Q In any event, you claim in this action that Mr. Nissan sent you a copy of the annual report of the company for the period ending June 1970 sometime in 1971; is that right?

A Yes.

Q Can you give us the exact date when it was sent, when you received it?

A No. But I can give you the date that we discussed it, and he said he was going to send it to me.

Q What date was that?

A I believe it was March 22, 1971 when we discussed it.

Q So that you received the report subsequent to March 22, 1971?

A Yes.

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Q About how much subsequent?

A Pretty close in time, I imagine.

Q I don't want your imagination. I want your best recollection.

A My best recollection is that it was sometime within the course of a week.

Q So we now have it March 29, 1971, approximately?

A That is the outside. I said within a week. It may have been very well the next day.

Q I am not holding you to that. It is within a week?

A Yes.

Q I take it you read it?

A I looked at it and in the area that he was talking about, about the European data bank, I paid particular attention to that. There was a lot in the report, for example, that covered their contracts, I believe, just that they dealt with -- services they rendered to this one or that one, that I didn't read with as much interest.

And I also looked at the financial statement. When he talks about the fact that they acquired this asset --

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Q All right. How much time did you spend looking at the balance sheet and the profit and loss statement and the notes of Main Lafrentz which I am now referring to as Exhibit 13, Exhibit 9 and Exhibit 14, approximately?

A I could not even give you that.

Q You can't tell me whether it was an hour, a half hour, a day, a week or a month?

A The day I received the report I looked at it. I never looked at it after that. It was within that period of time, meaning I have looked at it now.

Q I understand that, but the day you received that report you looked at it, and how much time did you spend looking at it?

A I really don't know. I can not even give an estimate of time. If you are asking me if I gave it a line-by-line perusal, I would say no. Because at the point I was most interested in the fact --

Q Will you indicate to me from these exhibits, Exhibits 13, 9 and 14, what you claim you looked at?

A Well, firstly I looked and saw that the marketable securities on January 30, 1969 was over $500,000 and there was nothing in 1970.

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So I assumed, based upon what he said, that they were transferring the new business, what they were doing is taking monies that they had tied up in marketable securities and they were actually putting it into their business as far as acquisitions are concerned.

Q What else did you look at?

A Then I looked at the data bank license, because that was the largest item in the assets which is what he was talking about --

Q What did the balance sheet say on that?

A "Data bank licenses, at cost (note 1) $1,028,606." And I was interested in view of the fact that there was another item, "Data bank and systems development cost, at nominal value, $1." Realizing that here what he said was that they had acquired this thing, and the value of this particular asset.

That is what I looked at.

Q That is as far as the balance sheet is concerned?

A Yes.

Q Then the second page is the profit and loss statement, right?

A Yes.

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Q And the profit and loss statement, as I recall it, has a certification -- did you look at the profit and loss statement?

A Yes. I saw that the earnings lost -- in other words, what happened is they were in a better position in the sense that --

Q You started to say that they were in a better position in the sense that --

A It just looked that even though they were losing money, they were losing less money in 1970, which is what he said, that they were improving, which is that they were going to go into the black.

Q Did you notice the certification of Main Lafrentz?

A Yes.

Q Did you read it?

A I am pretty sure I did.

Q Do you notice the qualification?

A Yes. Which qualification are you talking about? In the sense that it is subject to realization of carrying value of data bank licenses?

Q Yes.

A Sure, I read it. But I took it to mean subject to the realization that they would get back the money

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for the investment in the data banks.

Q Did you read the notes to the financial statement which are on the next page, Notes 2, 3, 4, 5 and 6 which is part of Exhibit 14 for identification?

A I don't recall.

Q After you had --

A I might have, and I might not have.

Q You have no recollection one way or the other?

A No.

Q After you had --

A Because I will tell you, when I saw, as I indicated originally, data bank licenses, of course, this is retrospect, hindsight --

Q Whose hindsight?

A Mine. Don't forget, you are asking me questions about what I recall, and at the same time, for example, as part of my work product on this particular page marked for identification, I circled two items on the consolidated balance sheet; the data bank licenses at cost, and capital in excess of par value.

Q What is on Exhibit what?

A Exhibit 14. But this is something I did now, because I paid more particular attention to it.

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When I looked at the report that was sent to me and this balance sheet and the profit and loss statement and the accountant's certification, they were part of this annual report.

Q And the notes?

A And the notes, yes, as well as all descriptions that I was telling you about before, I was examining it as an investor, not as an analyst and not as a certified public accountant.

Q You could not divorce yourself from being a certified public accountant, could you?

A I have divorced myself.

Q You got a certificate as a certified public accountant?

A I have not exercised my skill since 1953.

Q Are you telling me you lost all your knowledge as a certified public accountant?

A I will tell you this, that I never in my practice as a professional have ever rendered a certificate signing my name to it. I never did that. I worked for three years as an accountant trainee for purposes of passing the exam. I am a theoretician based on what I knew then. I never worked on a case where I was ever involved in the preparation of a certificate.

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Q In order to pass the CPA examination which you did, you had to be familiar with the accountant's certificates, had you not?

A The emphasis, when I took the exam, and this goes back to 1953, twenty years ago, was on accounting theory. It was not specifically on accounting certificates.

Q Did you study certificates?

A The qualifications? No. I studied auditing procedures from the standpoint of auditing, but as far as preparation of certificates, as far as the wording is concerned, I don't recall ever going into that particular subject.

What I am trying to say is when I looked at this thing, I looked at it not from the standpoint of a certified public accountant.

And I will say this to you, also. I don't believe Mr. Nissan knows that I am a CPA, and I only brought that up when Mr. Willis yesterday was discussing my educational background.

I am proud of the fact that I was able to pass a rather difficult exam, and that I had the training, but I have not used it. I am rusty.

Q At what age did you pass the CPA exam?

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A Twenty-three.

Q At what age did you become a CPA?

A Twenty-three.

Q During the course --

A Approximately. Maybe twenty-three and a half or maybe twenty-four, or maybe twenty-two.

Q Since that time have you had occasion to read financial statements from time to time?

A May I tell you this. When you asked before whether I looked at the statement, I said yes, as far as I could recall.

I was not looking at the statement for qualifications of any type, or for the notes from the standpoint of the fact that there was anything wrong that I had to delve for, because, to be perfectly honest with you, because if I felt there was any problem as far as notes are concerned, or to carefully evaluate every word when obscurities were used such as, I read to you --

Q We will get to that, but it is not the question before you.

A I was not looking for any pitfalls. The statement was sent to me -- rather, the report was sent to me by Mr. Nissan because of his glowing -- I am once again

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describing my recollection -- his glowing thoughts as to purchasing of this European data bank. It was not from the standpoint of what I think of their balance sheet.

So, basically what I was doing is, I was looking at it with an eye of someone looking for things that were told to me to look for, rather than looking for things that might be traps that someone who had more expertise than I, not being a CPA, Mr. Nissan, what I considered his skill in analyzing statements, as far as his own practice is concerned --

Q You are not getting back from your previous statement.

You got the statement and you read it, and you noticed the qualifications and you noticed the certification.

Is that still your testimony?

A I noticed the notes? The notes are part of the statement, the notes were part of the annual report, and I said that the notes were there. Whether I read them or not, I don't recall.

Q The notes are part of the statement, aren't they?

A Yes.

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Q You testified previously that you looked into them, you read Note 1?

A I said I am pretty sure. The best I recall. I don't remember whether I read it or not. I might have read it, and then again I might not have.

The chances are most likely I did read it.

Q That is your best recollection at this time?

A I am not sure.

Q After you finished doing all that, what did you do with the annual report? Did you throw it in your wastepaper basket after you finished?

A I don't even recall doing that, but at the same time I didn't consider it any more than the day I saw it.

Q Do you know what you did with it? Did you discard it?

A What do you mean by discard? You said throw it in the wastepaper basket. Maybe my wife threw it out, and what I consider to be today's newspaper.

He wanted me to be acquainted with this particular data bank and the fact of how great an asset it was.

Q We will get to the speeches later.

You read it as you would read a newspaper?

A Strike that part. It is colloquy.

Q You read it as you read a newspaper,

MR. RICHARD G. LYON: Yes. Thank you.

(Whereupon, at 4:45 P.M., the deposition was adjourned to Thursday, October 11, 1973 at 2:00 o'clock P.M.)

oOo

Robert R. Felton

Subscribed and sworn to before me the 7th day of February, 1974

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7622659
Qualified in Nassau County
Term Expires March 30, 1974

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I N D E X

WITNESS	EXAMINED BY-	
Robert R. Felton	Mr. Willis -	203
	Mr. Richard W. Lyon -	307
	Mr. Kunen -	349

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E X H I B I T S

DEFENDANTS' FOR IDENTIFICATION		PAGE
9	Photocopy of part of a larger document bearing an accountant's report of Main Lafrentz & Co. dated November 20, 1970	206
10	Document identified on the record as Page 12 of something	229
11	Batch of Documents filed with S.E.C.	282
12	Document entitled "3i COMPANY/ INFORMATION INTELLIGENCE INCORPORATED, NOTES TO CONSOLIDATED FINANCIAL STATEMENTS"	299
13	Document consisting of the balance sheet from the 1970 annual report	299
14	Copy of document taken from Exhibit 11 entitled "3i Company/Information Intelligence Incorporated, Notes to Consolidated Financial Statements"	350

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STATE OF NEW YORK)
:ss:
COUNTY OF NEW YORK)

I, ISADORA S. BORAK, C.S.R., a Notary Public of the State of New York, do hereby certify that the foregoing deposition of ROBERT R. FELTON, Pages 201 through 292 inclusive, was taken before me on the 10th day of October, 1973.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the County and State of New York, this 11th day of October, 1973.

Isadora S. Borak

ISADORA S. BORAK, C.S.R.

BORAK REPORTING 150 NASSAU ST.

STATE OF NEW YORK)
:ss:
COUNTY OF NEW YORK)

I, NATHAN BORAK, a Notary Public of the State of New York, do hereby certify that the foregoing deposition of ROBERT R. FREDON, Pages 293 through 366 inclusive, was taken before me on the 10th day of October, 1973.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at the County and State of New York, this 17th day of October, 1973.

Nathan Borak

NATHAN BORAK

74-1581

366-A

Vol. 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK - NEW YORK, JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, EXCERPTA MEDICA FOUNDATION, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATEN (EXCERPTA MEDICA) N.V., IFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (IFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUCEN, S. KIM KESSLER, and GERALDINE KESSLER,

Defendants.

UNITED STATES COURT OF APPEALS
FILED
JUL 17 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

CONTINUED DEPOSITION OF ROBERT FELTON, taken before Isadore S. Borak, C.S.R., a Notary Public of the State of New York, held at the offices of Sullivan & Cromwell, Esqs., 48 Wall Street, New York, New York, on the 11th day of October, 1973 at 2:00 p.m., pursuant to adjournment.

ONLY COPY AVAILABLE

BORAK REPORTING SERVICE, P.C.
150 Nassau Street
New York, New York 10038
WOrth 2-5057

BORAK REPORTING 150 NASSAU ST.

11

A P P E A R A N C E S :

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of Counsel

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ROBERT R. FELTON, having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION (Continued)

BY MR. KUNEN:

Q Will you please produce a copy of the original summons and complaint that you filed?

A The original? I don't have it but I would be glad to try to look at a copy that any of you gentlemen has. By the way, while you are looking for it, you had requested my paper work, bring my accounts.

MR. RICHARD G. LYON: That is right.

MR. FELTON: We can talk about it now, whatever your choice, Mr. Kunen.

MR. KUNEN: I have no preference. We will do anything that is congenial to everybody.

MR. FELTON: Let me get it. While I am getting it, let me say this. Just to clear up a point you brought up in haste in the conversation last night, when you asked me if I had a recollection of reading the note to the balance sheet on the data bank license, I want to say this to you, my answer

stands as it is but to this extent -- may I see it, please, that exhibit?

MR. WINN: That is it, there.

MR. FELTON: Yes. Referring now to Defendants' Exhibit 13 for identification. I don't recall, as I say, specifically reading it or not. There is a Note 1 that is alongside of data bank licenses and costs. And just based on intelligence, you know, that the average person has, including myself being an attorney, I am sure if I saw the note which as I saw it yesterday, and as I see it today, I read the note.

And the other point I just wanted to mention to you is this, that as far as the qualification is concerned, which is also in the same exhibit, when you were referring to it, about generally accepted auditing or accounting procedure, applying what I consider to be the reasonable man's test and being what I am as far as being a C.P.A., in the sense that I have the training and that I had worked for the years that I had indicated to you in the early 1950s, and also as an attorney, practicing attorney as I am, in reading this qualification now, it is actually almost like pears and apples, in this sense,

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that the comparison between what was on the balance sheet, data bank licenses, at cost and the qualification that is on the -- where is Exhibit 13? -- in our opinion subject to the realization of the carrying value of data bank licenses, in one case data bank licenses, at cost flags a cost to the company, whereas, as I used the term qualification which is a qualification in the sense that it is our opinion, subject to the realization of carrying value of data bank licenses, indicates there might have been some question in the mind of the auditors that this company buying such an expensive item, in comparison to their total assets, it is a possibility that they might not be able to get the money that they paid back for it.

That is what I meant by apples and pears. I thought I would point that out to you.

Q And this is what you are postulating now but didn't occur to you then?

A You mean would occur to me then, "then" meaning originally when I got the statement?

Q In March, about March 29 of '71.

A Certainly postulating now, which is what I said. As far as what then was concerned, I don't have any recall

other than reading it. And the only reason I brought this point up to you is because of what you had asked me, approaching me as a C.P.A., with qualification.

So giving it careful consideration last evening -- we were rushed, you said you wanted to leave a little earlier since you were tired, and we didn't have a chance to complete that point and since you were starting a new approach in the questioning, which I am sure you would most likely go back to this, anyway -- now that we are here, I thought I would mention it to you from the standpoint, when you used the term qualification, that the qualification, subject to the realization of carrying value of data bank licenses, just as a reasonable person and I am talking about now, about professional, and in this particular sense I am professional to the extent that I have a C.P.A. certificate, as I told you before and commented on a few moments ago, not preparing the certificates, but looking at it, subject to the realization of carrying value of data bank licenses, is the pears as compared to the apples of data bank licenses, as cont.

Q What do you mean pears as compared to apples?

A If there was any question in the mind of the auditors, your clients, Main Lafrentz, whoever conducted the audit, and of course I haven't had the opportunity as yet to

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speak to them, as to the question that this was not fairly stated on the balance sheet, such a major item, the fact that the balance sheet indicated purchases at cost over a million dollars, then the qualification in the accounting certificate -- and I am not talking to you as a certified public accountant but as a person who would want to be informed by a certificate that maybe there is something here that is not completely correct -- would have been something to the effect in our opinion the data bank licenses purchased were purchased with lettered stock and therefore the cost was not a cost that should really be sitting on this balance sheet in those particular terms, data bank licenses at cost, especially in view of the fact that this had been written at a time when the original agreement between 3i and Fred Von Eugen had been changed from the $150,000 balance to 30,000 shares and furthermore that the $150,000 which was the agreement, the balance due that was supposed to be paid in a certain number of months to Von Eugen according to the agreement between Von Eugen and 3i, apparently was never set up on the books as a liability on the part of 3i.

Couple that with an obscure sentence in the 1969 10K, which I found on careful reading, when I indicated I made my trip to the SEC, something to the effect that 3i

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had not decided what the proper accounting agreement would be for the entire transaction. And furthermore, the note which is referred to, Note 1, never even talks about Von Eugen and never talks about the original agreement with the $300,000, you see? So that is what I was really getting at. That is all. Thank you for your time.

Q You have given me a whole story which doesn't answer the question.

A Apples and pears?

Q You are postulating your impression as you claim you read it today. My question to you yesterday was directed to the impression it made on you when you read the statement when you received it.

A That is my point. It didn't make a bad impression because it wasn't really saying anything. It was saying, now, this is what I mean, what I was trying to say, it didn't say that this was not a purchase at cost, watch out for this, that this is an inflated item on the balance sheet. All it said was something to the effect, reading it carefully today, or last night, or within the last period -- recently -- was the fact that this is possibly a new company that bought some big item, 62% of its total assets, and maybe it is possible they won't get enough income derived from the benefit of this particular asset,

to get back their money that they paid for it. That is to me, as I say, a horse of a different color or apples and pears. That is what I meant.

Q And that was the thought that entered your mind when you read the qualification on the certificate sometime on March 29, 1971?

A No. That is my point.

Q I don't understand your answer and I don't understand what you are talking about. You are giving me double-talk.

A No, I don't give double-talk at all. I am trying to say this was not flagged in my mind when I read this whole thing.

Q Did you read the qualification when you read it?

A I said to you this, I believe I read the qualification which --

Q Just a minute. You made a speech.

MR. FELTON: Once again, all objections reserved as far as colloquy.

MR. KUNEN: You may make all your objections.

Q Did you read the notes to the financial statement in March 29, 1971?

A I say this --

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Q Yes or no?

A I say I don't recall whether I did or not, but I say since there was a note mentioned on the same line with data bank licenses at cost, then just based on the fact of intellectual curiosity I say this without any recollection or recall, as to what I did then, I would say to you that if it is on the same line as the line I looked, I am sure I spent the time to look.

Q All right. Now let's get back to where we started.

A Okay.

Q Are you finished with all your observations and comments now?

A I don't understand what that means, this last question you made.

Q You started to make statements and corrections and additions to your testimony of yesterday and all I am asking you is do you have anything else you want to say?

A Yes, I would like to say this, it would be best then, so we don't have this problem, go straight through to 5:00.

Q You came at 2:15 and I was here at a quarter of 2:00.

A I apologized.

Q So we will quit at 4:30.

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The summons in this action is dated May 17, 1973, the original summons, and I take it that you prepared the complaint shortly before you filed it; is that correct?

A Yes.

Q So that it is fair to say that the complaint was prepared sometime in May of 1973?

A No.

Q When did you prepare the complaint?

A Without having any papers before me, I would say the complaint was prepared in a period of four weeks or so.

Q Before you filed it?

A Yes. I am not sure. It could be two weeks, it could be six weeks. I am giving you an approximation.

Q We are taking your approximation. And prior to the preparation of the complaint and the issuance of the summons you made an investigation of the facts that you put into the complaint. You look at me quizzically. It is a simple question. Did you make an investigation of the facts?

A Please don't. I don't want the record --

Q The record will be as it is. You can say anything you want.

A I am saying now you are not going to put on the record your observations of the way I look at you. If I

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spend a moment to contemplate an answer, to give you a correct answer, and I want to remind you I am continued under oath, there is no reason why you have to put any type of remark like that.

Q Okay. Let's go on.

A Do I have your apology?

Q Of course not. There is no apology necessary.

A All right. The record will speak for itself and I move to strike those portions of your colloquy which have no bearing on the proof involved in this case.

Q Will you answer my question?

A Will you repeat the question?

MR. KUNEN: Read it.

(The question was read.)

A In the preparation of the original complaint, the investigation of facts was what I considered to be certain facts that I knew based on consideration of a conversation earlier that year, '73, plus another conversation or two following that with Mr. Nissen, whereby certain pieces and thoughts jelled. If you ask if there is an extensive investigation that I made with the SEC to support, in the preparation of the amended complaint --

Q Let us stick to the original complaint. What did you do prior to the time that you prepared the

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original complaint, what investigation of facts did you make? Did you go to the SEC, did you do something in addition to the talks that you had with Mr. Nissan? What did you do?

A No, I did not go to the SEC. I thought that after preparing the complaint based on all the thoughts that jelled in my mind that I would be in a position whereby discovery and inspection, that I was preparing, that I would be in a position to prove my case.

(At this time there was a brief interruption.)

(The answer was read.)

A (Continuing) When I referred to discovery and inspection, I referred to discovery and inspection for the defendants named in the original complaint.

Q All right. So that aside from the thoughts that you had in your mind you had no documents of any kind before you; is that correct?

A With the exception of the fact, the previously described documents that I had seen, that being the 1970 annual report plus the Brownstein report that was shown to me by Mr. Falk which I didn't have.

Q At that time you hadn't either the annual report nor the Brownstein report; is that correct?

A Correct.

Q But you had in mind what those documents contained?

A To the extent of my testimony as to what I gleaned from them, yes.

Q And what did you have in your mind?

A What I had in mind was reflected in my original complaint which stands for itself and which you have before you.

Q All right. You brought this action as a class action originally in your original complaint?

A Yes. Class action, in view of the fact that I had in mind the fact that I was going to make a Rule 23 motion for the class action.

Q And at that time you recognized, did you not, that as you testified yesterday that in addition to acting as a plaintiff and as a lawyer in bringing this action, you were acting as a fiduciary?

A Correct.

Q And as a fiduciary, I take it, you wanted to act fairly, you didn't want to mislead any of the other stockholders, and you wanted to make an honest presentation of the story; is that correct?

A Of course.

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Q And you feel that you have made an honest presentation of the story in your original complaint, as a fiduciary?

A I don't understand what you are referring to. I had not as yet been a fiduciary. I had not been appointed as a fiduciary. That was a contemplated fiduciary relationship.

Q But you were not acting any differently as a fiduciary than if you had been appointed throughout the whole thing. You intended to act with honesty and integrity and as a fiduciary; isn't that correct?

A I still don't understand what you are driving at. Besides being a fiduciary I happen to be an officer of the court and an attorney, sir. If you make plain what you are referring to, if you would refer to it specifically first rather than checking my motives --

Q I am asking you a question. You either answer it or refuse to answer it. What is your answer?

A I will answer it to this extent. That I try to comport myself in my practice of law as an officer of the court; the same as you are referring to what I considered myself in my approaching application or planned application to the court, as a representative of the class.

Q But as a representative of the class, as you volunteered yesterday, and in bringing this action, you

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recognize that you were acting in the capacity as a fiduciary and you intended to comport yourself accordingly?

A Correct.

Q And as a fiduciary you intended to act fairly to the members of the class and to the people that you are suing; isn't that correct?

A And to the people I am suing?

Q Yes.

A I try to act fairly to everyone I meet, sir.

Q You weren't going to bring a groundless action against people, were you?

A My understanding of the therapeutics of a class, are such that all the facts have to be aired.

Q Asked or stated?

A Aired. Aired.

Q Go ahead. I am sorry I interrupted you.

A That is my statement. Now, if you refer to something which you -- I am sure you are obviously talking about something groundless in any portion of the complaint, I will be glad to discuss it with you and tell you what the reasons are for my actions.

Q Don't try to read my mind and we will get along. Just answer my questions and give me your best testimony to the best of your information, the best of

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your knowledge and we will get along.

A I am not trying to read your mind.

Q Okay.

MR. FELTON: Once again I move to strike all portions of your statements which are not questions but merely colloquy, and such colloquy is rather completely out of order.

Q Of course in your original complaint you did not join Main Lafrentz as a party defendant?

A Correct.

MR. KUNEN: Please mark this.

(Document was marked as Defendants' Exhibit 15 for identification, this date.)

Q I show you Defendants' Exhibit 15 for identification which I believe to be a Xerox copy of the annual report of 3i Company/Information Interscience, Inc. for the year 1970, and I ask you to look at it and tell us if that is not a copy of the report which you received from Mr. Nissan as you testified on or about March 29, 1971?

A On or before March 29th?

Q I said on or about.

A Well, sometime after March 22 up to, as I believe, if you recall my testimony, sometime within a week thereafter.

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Q You testified yesterday that Mr. Nissan told you on March 22, 1971 that he was going to send you a copy of the annual 1970 report?

A Right.

Q Consequently, he didn't send it to you by hand, did he?

A I testified that I believe I received it sometime within a week of March 22 when I spoke to him and that is what I said now. When you said on or about I will accept it to this extent, that it might have been two or three days before that.

Q Did you get it by hand or was it mailed?

A It was mailed, of course.

Q All right.

A This is it, I believe.

Q The copy in front of you. When you received it did you read the report of the president?

A As I said to you, I didn't spend that much time looking at it. I specifically went to the section on the European Data Bank which Mr. Nissan had sent me the report specifically for.

Q Will you indicate for the record the section on the European Data Bank that you went to --

A By the way, I didn't say whether I read the report

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of the president or not. Just in answer to your question most likely I did.

Q All right. Now where did you go specifically, which you have a distinct recollection of, of going to the European Data Bank?

A Firstly to the balance sheet.

Q All right. Go ahead. Give us the sequence and tell us what you did, what you saw and what you went to.

A Now let me just say this, "Tell me what you saw" firstly is based on the recall that I have today, the recollection, which frankly is meager to this extent. The report I had. Now, in view of the fact that he referred to it as a large European Data Bank and he talked about the price, the amount, I say firstly but perhaps it is possible that I read the description of it, but what I most likely did was went firstly to the balance sheet when I looked at the amount in this particular case, data bank licenses, at cost.

Q A million?

A $28,605 .

Q With a reference to a footnote?

A Note 1. I will bring that up in a moment, which I brought up earlier today when you referred to it as gratuitous and I knew you would be going back to it in any

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event -- then I saw that the figure below that information "data bank and systems development cost, at nominal value, $1." Now, with Note 1, and this is not recollection, this is just as I say, common sense -- I went into -- let me testify.

Q Are you guessing or testifying --

A I am not guessing. I am telling you the way I comport myself, a reasonable man's approach to this. And in view of the fact that I saw --

Q So --

A Let me finish, this is answering your question. You want to know sequences. It is data bank licenses, at cost, Note 1. Looking for Note 1, scanning it, reaching a point where it said, "In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970 with Excerpta Medica Foundation, a foreign non-profit organization, for the exclusive right within the United States to market information services from Excerpta's Data Bank of biochemical information. The consideration for this right is $1,000,000 including 46,666 shares of Class A common stock issued in October of 1969 which the Company can be required to purchase at $15 per share in October of '71..." And so on for that particular paragraph.

In looking through this Exhibit 15 that you just

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handed me, the annual report, there is -- I am not sure of the page but I see here there is a third column with large, big letters, Excerpta Medica Foundation, describing the journals indicating that "Approximately 3500 journals constitute the world's prime source of biomedical information. These journals are continuously reviewed by the Excerpta Medica Foundation, located in Amsterdam, and founded in 1946.

"Subscribers to either the Biomedical Data Bank or the Drug Literature Program Data Bank have access..."

Q A little slower so we can follow you because you are the only one who has it, and a little louder.

A "...have access to bibliographic data, abstracts and Excerpta Medica's Master List of Medical Indexing Terms, a highly specific Thesaurus of preferred terms, synonyms and word forms.

"Biomedical Data Bank, The Excerpta Medica Foundation screens over 2 million pages of biomedical journals each year, and adds more than 300,000 documents annually to the Biomedical Data Bank. These documents are specially processed by 3i to provide comprehensive biomedical information services."

And then there is something about the Drug Literature Program.

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Q You read that part of the report when you got it?

A Yes.

Q And it made an impact on you, did it not?

A Yes.

Q All right. Prior to the time that you read what you just dictated into the record from the report, had you any idea of the nature of the business of this company?

A Which company?

Q The company that you are a stockholder of.

A Sure.

Q When did you find out the nature of its business?

A Sometime in January of '71.

Q And how did you find it out?

A I think it was connected with either the time that I wanted to sell the original stock that I bought in July of '70 when I was dissuaded from selling because of the increase, the fact that somebody else wanted to buy my stock, Mr. Nissan had a buyer for it, or when I bought the nine bunch of stock around 7-3/4 when already it had reached a much higher level than the 4-3/4 I paid in July of 1970. That is when he told me something about the fact

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that they are in this medical scientific computer business.

Q And that entranced you?

A Entranced me? I don't know what that means. I wouldn't answer a question like that.

Q What impression did that make on you? Did it interest you as an investor that they were in that kind of a business and because of that you wanted to make an investment in it?

A Sir, I bought the stock in January of '71 and I paid $3 a share more than I originally paid for it. So this must have been a consideration.

Q It was a consideration of interest to you that this was so interesting and a business that had romance or something to that effect; is that right?

A Let me say this to you. First of all, I don't like the word "romance".

Q You can use any other word in substitute.

A I am not going to answer your question on romance. I will say this, not in answer to your question, because there is nothing romantic in investing one's money. This is a hope for appreciation. The time that it became most interesting to me was when I found in March of '71 that big acquisitions were planned.

Q What part of March of '71?

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A I would think somewhere in the neighborhood of around March 20 or March 22 of '71.

Q As a result of what --

A Let me finish. Up to that time it was purchasing it because of the fact that earnings were going to improve and that Mr. Nissan felt that because of that the stock would go for 15 which should have been what he considered to be a reasonable and fair value. We had just come out, the stock market, I should say, had just come out of a rather bad slump and so at 4-3/4 he considered it a great buy in view of the fact that people had sold a lot of different stock including blue chips to bring the Dow Jones averages in 1969, I believe, to a very low level. He felt that this was a stock that would improve.

So when I asked him, he told me in January of '71 the business they were in, he didn't spell it out in terms except for the fact that this would appreciate in value to a level of $15.

Q What did he tell you in January of '71 as to the nature of the business?

A They were in the computer line.

Q Just computer?

A That they were in the science or medical computer line.

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Q That is all?

A Pretty much so except in the sense he didn't tell me the applications or anything to that effect except for the fact that the earnings were going to improve and the stock appreciate in value to around $15. He didn't use the word "appreciate". It was my gist of it. Something to the effect that the stock would go to $15, something along those lines.

Q You were talking about, a few seconds ago, the fact that there were contemplated acquisitions that you were told about which influenced you in some way and this happened, you said, about March 21 or 20, 1971?

A I said March 20 -- now looking at my confirmation tickets I see the date is March 22, 1971.

Q What was said about that?

A Acquisitions?

Q Yes. That impressed you about this company?

A Are you talking now about the acquisition at the Dava Dark?

Q I don't know. You were the one who mentioned the fact that when you talked to Mr. Nissan you were impressed with the fact and you went out and bought the stock because he said your company was going to make certain acquisitions that had an impact.

A When you say went out and bought the stock, I gave him an order to purchase. Is that what you mean?

Q Okay, okay, I meant that, too. I accept your correction. All right.

A He said that there were a couple of big acquisitions that were in the works. This is the gist of what I recall he said, multimillion dollar acquisitions.

Q Is that the extent of the conversation?

A What do you mean the extent of the conversation? We talked about some other things, too.

Q Only on the question of acquisitions I am talking about.

A Perhaps something relating to the fact that they were in related types of companies that were also in the computer line.

Q And he said it was a multimillion dollar acquisition?

A Acquisitions he said, a couple of them.

Q Did you say to him in words or substance where is this little company going to get the money for this kind of acquisitions?

A I just want to say this to you --

Q Can't you answer my question?

A I am going to answer in this way. Most of the time

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I would call Mr. Nissan, sometimes he would call me on the phone. But in any event, whether he called me or I called him it was the same thing. Mr. Nissan was a very, very busy registered representative, so much so that he had a couple of secretaries. Mr. Nissan had a way of saying "goodbye". He said, "Talk to you later" and hang up practically the phone in your face. There was no time to talk to Mr. Nissan and go into too many details. That is why I sound ignorant along the way, that is the way it was.

If there is any romance or my being entranced and I say this to you now in retrospect, it was with Mr. Nissan and his approach. Perhaps if he had spent a lot of time and detailed the things, I might have been different, but Mr. Nissan was aloof, he told me what he wanted to tell me and he told it to me in the way like, almost like, "I am too busy to talk to you but I am talking to you anyway." You didn't tell him, "I am putting in my good money and before I put in my good money I want to talk to someone who can really give me some facts so I know what I am doing."

I say this to you, I came to Mr. Nissan as a professional and I say this to you now, in the sight of the oath I took the other day which I continue now, I

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talked to him and I trusted him every step of the way. Now, you have my papers in front of you as part of the exhibit, my statements, and I say this to you, you can look not only on the case involved here, this particular matter, but all the transactions. I put my implicit faith in the man every step of the way, including at the end by continuing in equity funding right to the end, meeting margin calls.

I just want you to know this. And so what it was, when he told me these things, there were times I would ask him -- for example, he was so sure it would go over $15 as in March of '71, up to that time he was talking it would go to $15, I asked him why. But I trusted him because I knew and heard of his reputation. He had introduced himself to me, I believe, as a vice president of Walston & Co. and when I went up to see him for a few minutes at that time he had his own private office, a cubicle, with secretaries, very, very busy executive in my opinion.

And so I trusted him and when I asked him and he told me, I didn't explore it because I tell you frankly speaking, he could have told me anything along the lines if he had taken the time to answer my questions but I still wouldn't have understood it because to be perfectly honest with you, that was not my line. That is all.

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Q All right. Mr. Felton, apropos that, you are a C.P.A. and a lawyer and an active trial lawyer and a man of some years and not a neophyte, so that you could not be taken in just seeing a man in a cubicle with two or three secretaries and have that make an impression on you so that you disregarded everything else?

A Oh, no, I didn't say that. I say this, that I came to him by a recommendation and he wasn't the type of a broker that I had met at Oppenheimer & Co., and I am talking to you now only the ones that I met. I didn't meet them all. I am not casting aspersions on Oppenheimer & Co., who tried to sell me a stock. I said he dealt in specializations and I believed him.

Q And you saw a chance to make money through him and that was what interested you; isn't that right?

A To make money?

Q Yes.

A Certainly not what happened, to lose money as I did.

Q He impressed you as a man who would get you into situations where you would make substantial profits so you went along with him. Isn't that the sum and substance of what you are telling me?

A Substantial profits? Profits; but not substantial losses which is what finally developed.

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Q At the time you had this talk with him on March 22, I believe, of 1971 about acquisitions, had you any idea of the net worth of your company?

A No.

Q Had you any idea as to from what source this company could get multimillions of dollars to make these acquisitions that you were talking about, that you claim he said they had in contemplation?

A I don't know if it was in March of '71, March 22 or sometime thereafter that I learned that those acquisitions were for stock but I am pretty sure that by June 7 of '71 when he said that the acquisitions were ready for signing that he had mentioned the fact that there were acquisitions of stock.

Q And did he indicate to you then as to why people should be willing to take the stock of this kind of a company to give them multimillion dollars worth of assets?

A I just want to tell you something else that comes to mind, partially in answer to this and partially in the previous answer when we talked about what you referred to in effect as my naivete as an investor.

Q I didn't say that you are naive as an investor. I think you are sophisticated.

A You do?

Q Yes.

A I tell you something, sir, in that regard, unfortunately the record has to speak for itself.

Q I am sure it will.

A The price of stock had improved firstly up to $15 and then as I say in June of '71 it moved up to $20, maybe even higher, but on June 7, '71 it might have been higher -- but on June 7, '71 I paid $20 for the stock. The value that I considered for the stock, in purchasing 1,000 shares of it, on June 7, '71, how could I possibly question the fact that the value of the stock, as far as the value to people who were accepting the stock when I myself was purchasing the stock for my rather limited funds in the sense that as far as my portfolio was concerned, in the sense that I was committing over $20,000 on June 7, '71 considering and believing Mr. Nissen that the value of the stock at that time was worth $20 a share.

So how could I then say if I am putting my money into it at $20 how could I question somebody else accepting stock of the same company for purchasing their company? If I felt that they should have been, that they were not getting value for their money, then I certainly wouldn't be putting my money in at that point.

Q So the upshot of all this is that you were

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impressed in your investment and this stock with the fact that this company was making, according to Mr. Nissan, acquisitions of other companies; is that correct?

A No.

Q Where is it wrong?

A What you have actually done, you have taken one reason and used that as my reason for buying the stock.

Q What other reasons did you have?

A Originally, as I told you before, and I testified in the past, it was because it was a good buy and that the earnings would improve and --

Q How did you know that?

A Let me finish my answer, unless you want to leave my answer open for the future.

Q Go ahead. I will give you all the time you want. Go ahead. You said you were orginally impressed that it was a good buy and the earnings would improve and I interrupted you.

A I didn't say impressed. Maybe I used the word "impressed" but I was originally told at 4-3/4 it was a good buy and it proved to be a good buy at that time because it traveled in a good course upward, that by January of '71 it was 7-3/4. I want to tell you this. I don't have the benefit in front of me of any quotations at this

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time so when I say it went up to 7-3/4 in January of '71 it was based on the fact of what I paid for it in January of '71. It might well have been $9 or $8 a week or two before. But from my recollection, what I understand, I paid 4-3/4 for it in July of '70 and I paid 7-3/4 for it on January 13 of '71.

Let me finish. Now, at this particular point the stock was moving in the direction that Mr. Nissan said it was going to move. What actually happened here was, as I have analyzed it now, looking back at my transactions, the profits that I was making really weren't being realized because what I was actually doing was, I was being put in or put back, suckered in so to speak, to buy back the stock by approximately --

Q By whom?

A Let me finish.

Q By whom?

A By Mr. Nissan -- at approximately the same price I sold it. So if there is any cause of action you are calling for here it is the fact I wanted to get out and each time I wanted to get out the stock stayed at a certain point, maybe even for a day or two or week or two for the better and went back to the price I sold it at and the story got more interesting.

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Q The story from whom?

A What?

Q The story from whom?

A Mr. Nissan. Plus also if you recall I mentioned the fact that Mr. Einhorn at the Knick basketball game recognized the name of the stock as Mr. Nissan's stock or Jim Nissan's stock.

I will tell you something else, too, if you recall I testified earlier, yesterday, or the day before, the fact that, the coincidence, the fact that Mr. Falk, my friend, sometime, a couple of days or within a week after I purchased the stock at $20 had heard that the bank, and in this case --

Q You told us that yesterday.

A You want to know, you are exploring my reasons and I am telling you my reasons.

Q All right, go ahead.

A Just let me finish, bring it to perspective. At this particular point when I heard the bank up in Rochester or Syracuse is buying stock, this dovetailed into the last story Mr. Nissan told me, you see. And so this was the reassurance, this was, so to speak, the thing that kept me in and locked me in, followed by my seeing the report in July of '71.

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Q Well, the statement that earnings would improve, that came from Mr. Nissan himself, did it?

A Sure. I didn't talk to anybody else about it except perhaps, as I say, Mr. Einhorn and Mr. Falk in passing.

Q The report that you looked at, which is Exhibit 15, you looked at the report with the footnote and the qualifications and everything else; right?

A You mean, you referred to which I dictated, or at least not dictated, but I said in response to your question as far as Note 1?

Q Yes.

A Yes.

Q Looking at that Exhibit 15, regarding the data process business, which you read into the record from the report --

MR. WIDIN: Data Bank you mean?

MR. KUNEN: Data Bank, yes.

Q Is there anything wrong with that? Did you find anything wrong with that statement? That was accurately set forth, was it not?

A Which one are you talking about? In the note?

Q Not in the note.

A Or in the description?

Q In the description.

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A As far as I know not. You are talking about the number of journals and the number of articles and all that?

Q Yes.

A So far as I know not.

Q So far as you know that is accurate?

A Yes.

MR. KUNEN: Mark this, please, as the next exhibit.

(Document was marked as Defendants' Exhibit 16 for identification, this date.)

Q I show you Defendants' Exhibit 15 for identification which is an annual report of the 3i Co./Interscience, Inc. for 1971 and I ask you if you ever saw that report?

A No. However, part of the report is the balance sheet and statement of loss and the other financial statement I saw in my research at the SEC as part of the 1971 10K of the company, I believe, I believe, I believe. It is the first time I have seen this report in this fashion. But I imagine that these figures --

Q Don't give me imagination. Give me your best recollection.

A My considered imagination --

Q Considered imagination is just as bad as

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imagination. So give me your best recollection.

A My best recollection is that I believe there are financial statements on the 1971 3i 10K which I reviewed along with the other papers and filed with the SEC.

Q Please look at the exhibit you left here yesterday. Will you please look at Exhibit 11 and tell me if the balance sheet for the year 1971 is not contained in that exhibit, the copy of it?

MR. FELTON: Off the record.

(Discussion off the record.)

MR. KUNEN: We will take a few minutes while you look.

(The witness examined Exhibit 11.)

A What is your question now?

MR. KUNEN: Read the question.

(The question was read.)

(Discussion off the record.)

A In reviewing or going through the pages of Exhibit 11 and considering what I said yesterday, the fact that these pages are completely out of order and some are photostated in one fashion in the SEC in New York and the other in Washington, and considering the fact that I indicated the financial statements appeared on the 10K, and for example what you asked me about the balance sheet, looking at it

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quickly, the figures on these two sheets I give you, which are split in half, in view of the photostating differences at the SEC, consolidated balance sheet June 30, 1970 the figures are there on the bottom line equivalent and equal to the figures in Defendants' Exhibit 16 marked for identification but the blocking and printing is not the same and also there are references to schedules with Roman numerals which do not appear on Exhibit 16 for identification.

So subject to what I said, without, you know, going into any more detail at this time, this is it.

MR. KUNEN: All right. Please mark as Defendants' Exhibits 16-A and 16-B what the witness has just handed me in connection with the consolidated balance sheet, June 30, 1971 and 1970 in Exhibit 16.

MR. FELTON: No. This was given to you and picked out by me.

MR. KUNEN: From Exhibit 11.

MR. FELTON: From Exhibit 11 which I previously identified as being SEC records, apparently from the 10K of the company.

(Documents above described were marked as Defendants' Exhibits 16-A and 16-B for identification, respectively, this date.)

Q. Please do the same with respect to the

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footnotes in Exhibit 16.

A In going through it, when you asked for the notes, going through this pile of papers, as I say --

Q Exhibit 11.

A Yes, the pile of papers, I find notes to consolidated financial statements -- off the record.

(Discussion off the record.)

MR. FELTON: Read me what I said.

(The answer was read.)

A -- which appear to be related to the notes in Exhibit 16. Once again, looking at the last line, for example, in Paragraph 11 of the notes, principles of consolidation, it looks like there is an extra paragraph sentence that is added on the ones that I found and without reading it line by line, I haven't been able to find at this time 3, Note 3, fixed assets. It may or may not have been in the exhibits.

4 and 5, data bank licenses and long-term debts are here, but the data bank licenses in the SEC notes that I found for you, are considerably less than what is in Exhibit 16.

(At this time there was a brief interruption.)

A (Continuing) So as I said, the note I found in the SEC files which is part of Exhibit 11 which I saw when

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I was just interrupted, is considerably less than you have shown me here and marked as Defendants' Exhibit 16. And the same goes for Number 5, long-term debts, where there are certain columns for the years '72, '73 and '74, figures which do not look as though they are on the 16 exhibit.

Also I submit, or found, I should say, not submit, but found here your request, notes consolidated financial statements, Note 6, as part of Exhibit 11 and there are six paragraphs in part of Exhibit 11 under Note 6 and I just found six paragraphs under Exhibit 16, which is Defendants' Exhibit 16.

Number 7, as part of Exhibit 11 I found notes to consolidated financial statements Note 7, which has the same title capital stock options and warrants but is in considerably different form than Note 7 on Defendants' Exhibit 16.

Note 8, looking at it and without proof reading it, it appears to be similar, if not the same, to Note 8 in Defendants' Exhibit 16.

I haven't been able to find Note 9 in Exhibit 11 which may be there.

MR. KUNEN: All right. Will you please mark them in the order that Mr. Felton has indicated them as Exhibits 16-C et cetera.

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(Documents above described were marked as Defendants' Exhibits 16-C through 16-I for identification, respectively, this date.)

MR. KUNEN: Please mark as Defendants' Exhibit 17 for identification the annual report of 3i Company/Information Interscience, Inc. dated June 30, 1972.

(Document above described was marked as Defendants' Exhibit 17 for identification, this date.)

Q Mr. Felton, when you were looking through Exhibit 11, at your request to facilitate your looking for the documents, I asked you also to look for the consolidated statement of the 3i Company balance sheet for the notes, et cetera, for June 30, 1972 with a comparison to 1971 and I think you have done that. Please hand me the documents.

A What do you mean comparison to 1971? You are holding up something. You marked it as Defendants' Exhibit 17.

Q Right.

A You are asking me if I found a consolidated balance sheet that appears on Defendants' Exhibit 17?

Q Right.

A Looking through it I was able to find the asset side

of this balance sheet. Now, the other may be in the papers, I don't know. As I say, when I looked I found the asset side.

MR. KUNEN: Please mark the asset side as Exhibit 17-A.

(Document above described was marked as Defendants' Exhibit 17-A for identification, this date.)

Q And at this point you haven't located the liabilities?

A No.

Q All right.

A What else do you want?

Q I want the profit and loss statement and the notes.

A I referred to Defendants' Exhibit 16 marked for identification which in some forms is very similar to the consolidated statement of loss and deficit in Exhibit 17 with the exception of the fact that it includes the years 1970, '69 and '68 and the form is different as far as blocking and wording.

As to your request for notes to the consolidated financial statements as found in Exhibit 11, which are comparable and in some respects similar to the notes of

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the consolidated financial statement found in Exhibit 17 marked for identification, there is one, options.

Q You mean Note 1?

A Note 1, options. Three paragraphs on both. However, looking at it very quickly I see for one thing that the first paragraph, the end of the sentence in parentheses, whereas in one it says see Note 10 to consolidated financial statements, it says see Note 11 on consolidated financial statements. In view of that, without reading it further, it has to be viewed with caution.

Q Go ahead.

A When I say caution, this is a copy of a page that was found in the SEC records, caution meaning whether it is the same or similar to the other one, as part of the annual statement for '72 that you have shown me.

Q Thank you.

A Then I have Note 5 and part of what maybe would be Note 4. Note 5 being the data bank licenses. Here, again, on pages in Exhibit 11 I found the beginning of data bank licenses, Number 5, which would be the first two paragraphs and without reading them they both start the same, the policy of the company in both paragraphs, and the company has an agreement with Excerpta Medica Foundation. However, in Exhibit 17 that you presented

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to me, the third paragraph, being: "The $1,000,000 cost (76,666 shares of Class A common stock issued in 1969 and 1970) of obtaining this data bank license has been charged to current operations as an extraordinary item. This amount was deemed not to be recoverable through future operations because of the losses sustained and the annual fee obligations under the present agreement. Management is currently negotiating with Excerpta to reduce the Company's operating responsibilities as well as the aforementioned financial obligations under this agreement. The future operational status of these services is dependent upon the outcome of these negotiations." -- has not been found by me in Exhibit 11.

Q That is not there?

A No, but it would be, in view of the fact that the page ended, which I found in Exhibit 11, the second paragraph, it would be there but it would not be identified by number because it would be the end of a note.

Q And some of these things that you are looking for, that you cannot find with regard to notes on Exhibits 16 and 17 could be in the SEC papers but you didn't copy them; isn't that right?

A They could be either in papers that I didn't copy or papers that are in Exhibit 11 or in papers that I viewed

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and did not copy.

Q All right. Let's get the balance of the notes.

A By the way, this is an extra copy of the same note and I am giving it to you just to point out the difference in photostating and to indicate to you the differences in sources.

Q The paper that you have just handed me is a copy of Note 5 and some stuff that precedes it?

A Yes, but --

Q Okay.

A But different original.

Q We have your statement on the record.

A There is a note to consolidated financial statements which is not numbered but the last paragraph on the page begins the same as the third paragraph Note 8 on Defendants' Exhibit 17: "Warrants to purchase 103,000 shares..."

I give you this which I also found in Exhibit 11. Now so far as your request for consolidated of changes in financial position, as found on Exhibit 17, this is what I found in Exhibit 11 subject to a line by line perusal.

MR. KOMEN: All right. Please mark them in the order in which the witness presented them,

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starting with 17-B.

(Documents above described were marked as Defendants' Exhibits 17-B through 17-F for identification, respectively, this date.)

(Whereupon, at 4:30 p.m., the deposition was adjourned to 10:00 a.m., October 12, 1973.)

oOo

Robert R. Felton

Subscribed and sworn to before me

this 7th day of February 1974

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
Qualified in [illegible] County
Term Expires March 30, 1974

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, ISADORA S. BORAK, C.S.R., Notary Public of the State of New York, do hereby certify that the foregoing deposition of ROBERT R. FELTON was taken before me on the 11th day of October, 1973.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

In witness whereof I have hereunto set my hand and seal of office at the County and State of New York, this _____day of_____,1973.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., JAMES NISSAN, etc.

Defendants.

----------x

CONTINUED DEPOSITION of ROBERT R. FELTON, taken before Isadora S. Borak, C.S.R., a Notary Public of the State of New York, held at the offices of Kaye, Scholer, Fierman, Hays and Handler, Esqs., 425 Park Avenue, New York, New York, on the 12th day of October, 1973 at 10:00 A.M., pursuant to adjournment.

BORAK REPORTING SERVICE, P.C.
150 Nassau Street
New York, New York 10038

WOrth 2-5057

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ROBERT E. FELTON, having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION (Continued)

BY MR. KUNEN:

Q. In Paragraph 117 of your complaint, referring to the balance sheet for the year ended June 30, 1970, you allege that the aforesaid balance sheet of defendant 3i Company for the fiscal year ended June 30, 1970 stated therein that the cost of this purchase involved capital in excess of par value of $842,333. And you were referring to the deal with Excerpta Medica Foundation; right?

A Yes.

Q There has been marked in this examination Exhibits 13, 9 and 14 which is the balance sheet which was put together from the papers that were part of Exhibit 11 which you examined at the SEC. Now, will you please indicate to me --

A Some of the papers examined at the SEC.

Q What is that?

A Some of the papers examined at the SEC.

Q Some of the papers. Okay. Now, will you please indicate to me where in this balance sheet there is a question that the cost of this purchase involved

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capital in excess of par value of $842,333?

A What is your question, please? Please repeat it.

(The question was read.)

A It is part of the figure that was circled of $2,649,274.

Q And did you get that figure from Note 6 of the balance sheet?

A What do you mean did I get it from Note 6?

Q How did you arrive at the figure?

A My answer to you now or in preparation of the complaint?

Q In preparation of the complaint.

A Okay. From my work that I did on the 10Ks specifically the year 1970, my research work for it, which I previously testified to that I did at the SEC in New York and in Washington.

However, you have handed me here today, stapled together, three defendants' exhibits, Number 13 which I refer to where the circled figure of $2,649,274, the Exhibit 9 and Exhibit 14 and which obviously you want me to refer to is Note 6 which is the third page that you handed me. Written there is a breakdown of the $2,649,274, wherein there is --

(At this time there was a brief interruption.)

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MR. FELTON: Please read my answer.

(The answer was read.)

A -- very faintly legible figures of which I can discern something that looks like $842,333 and --

Q I can't see my Xerox copy of it but the exhibit is more legible.

A I can see it. $842,333 and that is under the "capital excess of par value" and to the left, "stock issued in connection with agreement with Excerpta Medica Foundation (note 1)."

Q Now, in Paragraph 119 of your complaint you have alleged that "The aforesaid agreement of September 19, 1969 between defendant Excerpta Medica and defendant 3 I Co. involved 46,666 3 I Co. shares."

Is that what the entire agreement provided for?

A No. The entire agreement provided for -- we are talking about the agreement. This is the agreement that I read that is part of the SEC files regarding which was filed, I guess, by 3i, which I read, and as a matter of fact that is the agreement that I am working on now involving Excerpta Medica's motion. So I don't have the agreement before me. But what I meant in this particular paragraph, the 46,666 shares, what I was referring to was that part of the agreement which was for the purchase

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of the data bank licenses, the so-called purchase of the data bank licenses.

Q And these 46,666 shares --

A What I mean is that there were some agreements for payment later on if and when the thing ever got started up.

Q Do you have a copy of that agreement here?

A No, I don't.

Q Did you make a copy when you were down at the SEC?

A Do you recall the other day when I told Mr. Willis that I have the copy in my office, that I am working on it with regard to the Excerpta Medica motion?

Q I would like you to --

A But I have pretty much -- as far as, you know, my recall is quite -- not quite good but I have a recall of certain salient features of it.

Q All right. Will you produce that agreement? You don't have to do it now but at some time before this deposition is concluded, I would like to mark it.

A Before it is concluded in the sense that we can leave that open and --

Q Yes. Okay.

A Actually, I just want to say this. There is actually

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two agreements.

Q Whatever there are.

A Three agreements as a matter of fact. An original agreement and an addended agreement among the various parties and also an amendatory agreement in 1971.

Q So we are now talking about an agreement dated September 19, 1969?

A Which I consider the original agreement, that as between some of the Excerpta Medica subsidiaries and 3i and also the indemnity agreement, the same date, between Excerpta Medica Foundation and 3i.

Q And then you have an agreement dated what date in September of '71?

A I don't have the date.

Q In connection with that original agreement of September 19, 1969, isn't that correct, that the 46,666 shares were issued to Excerpta Medica in consideration of the agreement that was made by them with 3i Company?

A I don't even know if it is a fact because I don't even know what happened to those shares. I don't even know now in hindsight, considering what was said by 3i on the 10K of 1972 and considering the language used about the fact that the stock or stock rights terminated during the year 1973. I don't know where the shares are, whether

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they have been taken off the capital or the books of 3i. This is some of the things that I am very much curious about myself.

Q In September of 1969 when the agreement was made which you have just studied and have in your office, did the agreement provide that 466,666 shares --

A No.

Q Will you wait for my question?

A You gave me the wrong number.

Q 46,666. Is that the wrong number?

A You said 466 --

Q No. 46,666. Did the agreement provide that these shares were to be issued to Excerpta Medica by 3i in consideration for what was granted to 3i Company by Excerpta Medica under that agreement?

A That agreement provided for what I considered to be lettered stock. The agreement provided, and as described by the parties, in various -- in the report and in the 10K, using such phrasing as "can be repurchased," "rights to be repurchased".

Looking at the entire situation from the point of view of hindsight in considering the fact that what was stated on the 1972 10K and in view of the fact that apparently there was no consideration given by the company

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to setting up a LIABILITY for the $150,000 to Von Eugen for the other part of this transaction as a business broker, at this point my opinion is that it wasn't, this was not really what was provided for.

Q You have produced the agreement and you have indicated you were familiar with its contents. There was an agreement signed, was there not, between the parties on September 19, 1969?

A Yes.

Q And under that agreement which was signed on September 19, 1969 Excerpta Medica was granting certain rights to 3i Company; is that correct?

A Yes.

Q And 3i Company was paying for those rights in some form or other; right?

A Supposedly.

Q Doesn't the agreement so provide?

A Yes, but whether it really was ever actually contemplated by the parties, in view of the fact that Excerpta --

Q I am not asking you --

A In view of the fact that they therefore never asked for the repurchase and in view of the statements on their 10K of '72, at this stage it has to be all read --

Q You are jumping the gun. I am not asking

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you to interpret the agreement in the event of subsequent action and hindsight as you put it from time to time. I am asking you now, having read the agreement as a lawyer and as an accountant.

A Not as an accountant but as a lawyer.

Q Okay. We will keep you as a lawyer for this purpose. As a lawyer --

A What do you mean by for this purpose?

Q We will get to you as an accountant. As a lawyer, didn't the agreement provide that Excerpta Medica was going to get something for granting these rights to 3i Company?

A In September of '69, yes.

Q All right. And they were to get, were they not, 46,666 shares of 3i Company, whether lettered stock or any other stock, they were going to get stock, weren't they?

A They were going to get restricted stock.

Q They were going to get stock, weren't they?

A Restricted stock, stock that can be repurchased in the future at a certain price and with other provisions as well.

Q They were going to get 46,666 shares of 3i Company stock subject to a legend; is that correct?

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A Yes.

Q And that legend you have interpreted to be restricted stock; is that correct?

A I think there was some mention in the agreement to that effect.

Q All right.

A So it is not my interpretation. This is what I read or what I gleaned from reading.

Q And you have characterized that as letter stock?

A Lettered.

Q Lettered.

A Well, lettered I think is interchangeable with legended which is the term you used.

Q Have you ever heard of lettered stock before?

A Have I ever heard of lettered stock before?

Q Yes.

A Yes.

Q In what connection? When did you first hear the term lettered stock?

A When did I first hear the term lettered stock?

Q Yes.

A I guess in my readings on the subject of people who take businesses and make them public, people, let's say

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for example, I have known people who owned a business that it was decided that they go public and, what I mean by that that their company, their stock should be traded, and it was very much important in view of the voting rights that they wanted to retain that the stock that they had should be restricted in some way from sale as well as for some people who rendered services in connection with handling the public offering to protect the public from share selling from people who were either insiders, who were not required, who were actually taking the stock for some form of investment as opposed to sale.

Q When you say in your reading, is that in your reading when you read Bromberg and Loss and those periodicals you testified to when you were first examined?

A No.

Q How much before that?

A It is hard to say when a knowledge is acquired but we go through life and we learn a little every day and if we remember and we retain information, it is part of our storehouse of information.

Now, I say this to you. I am sure if I had a chance to consider my answer for a few hours or a day or two I would give it to you more completely but basically in the position I am in now, as your deposed witness, this is

as good an answer as I can give you.

Q All right. So when approximately before you read Loss and before you read Bromberg did you acquire this knowledge that you testified to with regard to what lettered stock is?

A By the way, when you said I read Loss and I read Bromberg, I referred to them -- a question was asked of me several days ago about intense study. So that we should not be confused as to my information or yours or anyone else's, I consulted Bromberg and I consulted Loss for particular sections of the law that I was interested in, in particular the fraud provisions of the law because I wasn't reading the 33 Act or the Securities and Exchange Act of 34 from cover to cover. What I was actually doing was, I was thinking about a particular problem and I was going to a particular source, as an attorney, looking for the particular source, for example, looking at 17A or 12(2) of the law and following --

Q Which act?

A '33, sir. For example, in comparison between 12(2) and 17A, as far as privity, exactly who was involved as purchasers and sellers, for example in 10 (b) 5 in connection with the sale of the security --

Q All right. You explained.

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A I want to give you an idea. Basically speaking, what I actually did was I used these books as references, these books for purposes of a particular answer to a particular problem. These were not texts. Even though I read them, my approach was to go to the particular subject and heading that I was involved with.

Q All right. Now that you explained all that and my question was only to give you a monument.

A What?

Q My question was only to give you a monument as to the incident. And I want to know how soon, how many years, months, days before you did all that with respect to Bromberg and Loss did you become acquainted with the term lettered stock as you have defined it in this examination? That is all I am asking you.

A I don't know.

Q Give me an outside date.

A I have no idea. I have no idea. I know this, it certainly wasn't in connection with this case or in connection with anything involving this case.

Q It was not in connection --

A No.

Q In Paragraph 120 of your complaint you allege: "Although the aforesaid agreement of September 19,

1969 gave defendant Excerpta Medica the 'right' to require defendant 3 I Co. to 'repurchase' those shares at $15.00 per share, the aforesaid Note 1 reflected the real intent of the parties; that defendant 3 I Co. ' can be required to purchase at $15.00 per share in October, 1971...'".

Where did you get that from? What did you base that allegation on?

A Well, this was, of course, prepared having all the actions or inactions of the parties before me.

MR. KUHEN: I move to strike that.

Q All the actions or inactions?

A Yes. When Excerpta Medica or any of their subsidiaries never had a repurchase of stock.

Q You mean they never exercised their options to have the company repurchase it? Is that what you are trying to say?

A That is right. Also the agreement has some wording to the effect that there are rights to acquire it whereas the Note 1, the consolidated financial statements -- off the record.

(Discussion off the record.)

MR. FELTON: What did I say?

(The answer was read.)

A -- as it appears in Defendants' Exhibit 14 for

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identification which I referred to yesterday contains the sentence: "The consideration for this right is $1,000,000 including 46,666 shares of Class A common stock issued in October 1969 which the company can be required to purchase at $15.00 per share in October 1971."

Q What is wrong with that?

A What is wrong with the words "can be"?

Q Yes.

A When you moved before to strike, I am glad you asked --

Q I am happy that you are glad.

A -- to strike my answer regarding looking at the entire transaction considering the statements of the company, the 3i Company, in the 10K of 1972 and considering the fact that Excerpta Medica and/or its subsidiaries have not required or had the repurchase in October of 1971.

Q Did you ever go into the reasons --

A Just a second. When you say what is wrong with that, the particular paragraph does not indicate wrong; it makes a statement. You asked me where I got it from, I showed you where I got it from. Wrong, I alleged further on in my complaint. But all I said in this particular paragraph which you quoted before is:

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"Although the aforesaid agreement of September 19, 1969 gave defendant Excerpta Medica the 'right' to require defendant 3 I Co. to 'repurchase' these shares at $15.00 per share, the aforesaid Note 1 reflected the real intent of the parties; that defendant 3 I Co. 'can be required to purchase at $15.00 per share in October 1971...'"

Are you asking me now what is wrong with it or what is wrong with Paragraph 120? I believe your original line of questioning was where did I get the information for 120, where is it based on. Now I showed you where it is based on.

Q What is the purpose of alleging it? What is wrong with it?

A The purpose of alleging it was, in part, a material misrepresentation and the omission of material facts.

Q All right.

A In the light of which makes the statement misleading.

Q What was the material misrepresentation and what was the omission to state facts?

A Paragraph 121, I would like to quote in answer to your question, partly in answer to your question: "These 'shares' held by defendant Excerpta Medica..." -- by the way, if they were ever held by Excerpta Medica -- "were never repurchased by defendant 3 I Co. and in the

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Report for fiscal 1972 by defendant 3 I Co. filed with The Securities and Exchange Commission, these 'shares' were characterized as 'stock rights, previously granted to certain stockholders to require the Company (3 I Co.) to repurchase 46,666 shares of its Class A common stock (which) have terminated during the year ended June 30, 1972'."

Q You are reading 121?

A That is right.

Q But I am talking about 120.

A I know. I say this to you. That firstly, which is what I suggested to you yesterday, the note to the financial statement, considering the original agreement, was not only Excerpta Medica but also the Excerpta Medica subsidiaries, to be read with the letter agreement with this Fred Von Bugen and since you represent Main Lafrentz & Co., considering the fact that Main Lafrentz & Co. went in there on their auditing or whatever they were doing and reading their agreements, which I believe they should have been required to read and examining the records of the 3i Company and not finding a liability for $150,000 set up by the 3i Company under the original agreement with Von Bugen for the second payment, plus considering the fact now that on the 1969 10K there was some statement

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to the effect that at that time in '69 they hadn't decided what the accounting treatment was, and in view of the fact that this 46,666 shares was according to the agreement to be repurchased at $15 a share in 1961 whereas the notes said --

Q In 19 what?

A '71, I'm sorry. Whereas in the notes to the consolidated financial statement the wording was "can be required to repurchase." And the fact that the sentence was carefully worded in the notes, Note 1, "The consideration for this right is $1,000,000 including 46,666 shares of Class A common stock and 30,000 shares of Class A common stock" firstly, there should have been a breakdown as to who owned what, who got the 46,000 shares and who received the 30,000 shares.

There has been some statement to the effect that a liability of $150,000 was canceled as a part of this agreement. There should have been some statement here as to the type of stock that was given. This was just a basic statement, $1,000,000 purchased at cost with a completely misleading description of the transaction in Note 1, that the average person, for that matter, myself, didn't understand what it was, if it had been read, I say if it had been read in the light of my previous testimony

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as to whether I read it or not.

Q In addition to the right of Excerpta Medica to exercise its option for the repurchase of the stock they had another option, didn't they, in the agreement?

A What was the other option?

Q I am asking you. You read the agreement.

A I am not sure what you mean.

Q Didn't they have the right to retain the stock and have them registered?

A Perhaps they did. I am not sure they did that, in view of what 3i said on its 1972 10K because as I read to you in Paragraph 121, 3i in its 10K said the stock rights previously granted certain stockholders to require the company to repurchase have terminated during the year.

Q You have been using stock rights. What do you mean by stock rights?

A I believe that is the term used in the 10K.

Q What do you understand stock rights?

A What do I understand stock rights to be?

Q Yes, to mean.

A I understand that stock rights is entirely different than stock.

Q That doesn't answer my question. Do you consider that when an agreement is entered into as was

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the agreement of September 19, 1969 which gave Excerpta Medica an option to call upon 3i Company to purchase those shares for $15 a share, do you consider that stock rights?

(Discussion off the record.)

MR. FELTON: Please read the question.

(The question was read.)

A Now you are accepting the fact that it wasn't a stock right but it was an option? Is that what you mean?

Q I asked you a question.

A I know you did. Now you are asking me, you are describing the transaction as an option to purchase. I say this to you --

Q Just a minute.

A This was characterized -- now you are asking me if it was an option?

Q I am asking you whether the provisions of the agreement which gave Excerpta Medica the privilege of calling upon 3i Company under certain terms and conditions to purchase that stock from Excerpta at $15 a share, whether you consider that a stock right?

A It is not what I consider it. It is what the report for fiscal 1972 considered it, as I quoted in Paragraph 121 of my complaint.

Q Will you show me what complaint you are

talking about and where that is stated that way?

A I have seen it in several places in the SEC records but looking quickly through the papers, I would like to refer to -- apparently Number 7 of something, maybe the 10K of the fiscal year '72. It is labeled F-15 on the bottom of the page. May I quote?

MR. KUNEN: Let me mark it for identification.

(Document above described was marked as Defendants' Exhibit 18 for identification, this date.)

MR. KUNEN: This is a document which the witness has produced from the papers which he copied at the SEC which is part of Exhibit 11 and the witness cannot identify where it comes from other than what he has said, and now you want to quote something?

MR. FELTON: I would like to read the paragraph beginning with: "The Company has entered into an agreement with a stockholder to issue 7500 shares of its Class A common stock in exchange for cancellation of that stockholder's rights to require the Company to repurchase or register 30,000 shares. The rights previously granted to certain stockholders to require the Company to repurchase 46,666 shares

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of its Class A common stock have terminated during the year ended June 30, 1972."

Q Where do you get from that paper that those are, as you put in Paragraph 121,"stock rights"? That is your interpretation of what it says. It doesn't say it.

A May I try to answer your question?

Q Yes.

A You see you have to read this paragraph in the light of the beginning as well as the end of the paragraph. If this 30,000 shares, which were given to Von Eugen, would have been held by him and that he just had a right at a particular time to ask for repurchase at a certain price --

Q That wouldn't be a stock right.

A That wouldn't be a stock right.

Q Okay.

A But it says here that they have given him 7500 shares for his right to repurchase or register the stock which in effect means that he didn't have anything and he was happy to receive 7500 shares in its place.

And by the way, the interesting thing about this particular paragraph that I read to you has been the obscurity that has surrounded completely the description of this transaction from its inception and in the annual

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report of 1970 even the fact that when they refer to it as a stockholder and certain stockholders, that has not even been identified as Excerpta Medica Foundation or Fred Von Eugen. The same obscurity that I have said was found in Note 1 where the $1,000,000 consideration, using the term thereafter "including" and lumping together two transactions, 46,000 shares as well as 30,000 shares and somewhere else in these papers, just lumping it as 76,000 shares.

Q , But what you have now brought to focus in this last exhibit is something that happened sometime in 1972, was it, or '71?

A This is apparently part of the file of the SEC in Washington for the year 1972.

Q All right. You are just talking with hindsight from something that transpired, which you are interpreting, because they gave up certain rights and they made an agreement to accept 7500 shares in exchange for it; isn't that right?

A This is final hindsight but as I suggested to you before in view of the fact that they never set up a liability as far as I am concerned, I haven't had a chance to read their books, but this is my understanding of the $130,000 liability, to Von Eugen, and in view

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of the fact that the stock was not stock but lettered stock, or legended stock as you suggested, that this whole transaction should have been placed before the stockholders, not with the obscurity of Note 1 and secondly, this was not a data bank purchase at cost to 3i Company of $1,000,000. Certainly not have been permitted by the accountants to so be stated especially in view of the fact that, that a material quantity of this particular amount of money, which as I said I computed was approximately 62% of the total assets of the 3i Company for the year 1970 on the balance sheet of the annual report.

Q But that figure didn't have any impact on you. You were interested in the company itself, the prospects of the company, the romance of the company, the nature of its business and things of that nature. You weren't influenced in any way by that report.

A You know, I will tell you, sir, I think your statement is gratuitous and it is completely unfair in the light of my previous testimony, the fact of what I said. The term "romance" you have used in the past and I think I chided you in your use of it yesterday. As I indicated this was no romance here. This was the purpose of purchase for purposes of appreciation. And in view of the fact that Mr. Nissan mentioned the European Data Bank and sent

me the annual report, your statement is even more completely unfounded.

Q This right of Excerpta Medica to ask that the stock be repurchased by Si Company, if they wanted it or to ask that it be registered if they wanted it?

A Who is "they"?

Q Excerpta Medica. This was a contingency, wasn't it, that they had a choice to make up their mind at any time that they wanted?

A In light of what I read to you in Defendants' Exhibit 18 --

Q No, no --

A Please -- wherein the company said that the right previously granted to certain stockholders, you are not disputing the fact that certain stockholders were Excerpta Medica and their group, are you? Are you?

Q You answer the question.

A All right. To require the company to repurchase 46,000 shares of its common stock terminated during the year ended June 30, 1972, this is the answer (indicating) to your question

Q Isn't it a fact that Excerpta Medica, if they didn't want to require Si Company to repurchase the stock, had a right in their sole discretion not to do so?

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You read the agreement. What are we quibbling about?

A Sir, do you know what we are quibbling about? We are not quibbling at all. We are dealing here with a situation wherein innocent people were duped by wording.

MR. KUNEN: I move to strike the answer.

Q Either you are going to testify in response to questions or we will have the court rule on it.

A I am giving you an answer to your question. I am saying this to you. You are asking me if they had the rights in the future and I say to you that the 10K of June 30, 1972 said that their rights terminated during the year of 1972.

Q You are not even responding to my question. My question to you was that when you read that agreement of September 19, 1969 between the two parties, Excerpta Medica in their sole discretion, if they reached that decision, could forego requesting 3i Company to purchase that stock at $15 a share; is that correct or not correct?

A I don't know.

Q You sit here today and you say after reading that agreement you didn't know?

A No. I do not know. I do not know in the light of the amendments and everything that the parties have stated.

Q I am talking about September 19, 1969. Under

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that agreement that was written.

A And I am talking about the annual report of 1970 and I am talking about the allegations in the complaint where I am talking about a real intent.

Q You just don't want to answer questions.

A I want to answer it very well.

Q You are wasting my time because you don't answer my question.

A I can't interpret intent of parties. I say that it said they had the right, in quotations, to require defendant 3i to repurchase.

Q And if they had the right to do it that was their sole decision as to what they should do or shouldn't do. If they decided they didn't want to call upon 3i Company to buy the stock, they had the right to do that, didn't they?

A Yes, they had a right not to call. And obviously they haven't called.

Q And if they decided they wanted to keep the stock and have it registered they had a right to do that as opposed to having the 3i Company repurchase the stock; isn't that correct?

A That presupposes that they ever had the stock. I don't know that at this stage.

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Q But if they had the stock they would have had that right under the agreement?

A If they never got the stock, they wouldn't have the right. You see? For example, one of the ways of determining if they had the stock or not was what happened to the 30,000 shares that were issued as part of this $1,000,000 consideration to Von Eugen when he got the 7500 shares.

Q You have an agreement and whether they got the stock physically in hand or didn't get the stock physically in hand the agreement called for it, didn't it? Didn't the agreement call for them to receive it?

Look, Mr. Felton, all I am trying to get from you -- do you have the agreement now?

A No, I don't have the agreement. I am looking at the answer of Stichting Excerpta Medica, which is Excerpta Medica Foundation.

Q I am trying to get from you at this point there were certain contingencies in favor of Excerpta Medica Company --

A I want to read the answer. A statement by Excerpta Medica to you.

Q I am asking you a question without the answer. You read the agreement of September 19, 1969

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and under that agreement there were various contingencies which Excerpta Medica had; isn't that correct?

A Yes. If they really had them.

Q All right. If they had the stock --

A No, if they had the contingencies.

Q What do you mean by that?

A I am referring to Paragraph 20, I am referring to Paragraph 20 of the answer wherein in answer to Paragraph 136 of plaintiff's amended complaint wherein it was alleged that defendant Excerpta Medica never required defendant 3i Company to repurchase the 46,666 shares, the answer of Excerpta Medica is, the allegation that request was made that defendant 3i Company register the shares it obtained under the agreement of September 19, 1969 but that said registration was refused.

Therefore, in answer to your question I don't know what contingencies Excerpta Medica or its subsidiaries ever had under this agreement.

Q Look, my friend, what you have just read indicates that they had the stock and they were exercising a contingency to have it registered and the company didn't agree to register it. Isn't that right? Isn't that what you just read?

A This is what the answer of Excerpta Medica Foundation

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said. This is not what I said. This is what I read.

Q But what you read says that, doesn't it?

A Yes. But you suggested that they had a right to register the stock if they didn't ask for repurchase. Now, the 10K which is Exhibit 18 is stated by 3i Company that they lost their right to repurchase during the year ended June 30, 1972.

Q What has that to do with tea in China?

A As far as the other part, the registration, apparently there is no right even to register because this was never even done by 3i according to the answer of Excerpta Medica. And furthermore, I don't believe upon information and belief that Excerpta Medica Foundation ever instituted a lawsuit to force 3i Company to register these shares.

Q You are going far afield.

A No, I am not. You are asking me for the agreement and I am telling you what was in the agreement.

Q We have gotten to the point where you have indicated that under the agreement Excerpta Medica had certain contingencies which they could exercise. You said that a minute ago.

A I said that the agreement must be read with also what is considered the real intent of the parties.

Q Didn't you agree a few minutes ago that there

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were various contingencies under the agreement?

A I agreed to this extent, that the agreement provided for certain things which I also said.

Q Certain contingencies. Didn't you agree to that?

A That was your word, contingencies.

Q Didn't you accept it?

A I accepted this. That according to the agreement of September 19, 1969 there were certain agreements between the parties --

Q I want you to tell me directly and categorically whether you will or will not accept the word contingencies that I used. Weren't there contingencies in the agreement, number one, they could call upon, Excerpta Medica could call upon 3i Company to acquire the stock --

A To repurchase it.

Q Excerpta Medica could call upon 3i Company to register the stock, Excerpta Medica could hold the stock without doing any of the two? Isn't that a fair reading of that agreement which you read?

A For the first two, subject to my testimony as to the real intent of the parties, I will agree. As far as the third part, I will not agree.

Q Those were all contingencies which were

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within -- answer my question.

A The first two were contingencies, using your word, subject to my testimony as to the real intent of the parties under this agreement.

Q The real intent of the parties under this agreement you are taking with hindsight from certain things that you read later on in the reports that were filed later on; isn't that correct?

A No. Starting right after the agreement, in other words beginning with the 10K of 1972 going back through '71, into '70, into '69 and reading carefully what was actually occurring. Considering the contracts that you refer to plus the 10Ks of 1969, 1970, 1971, 1972, considering the statements made in the annual report of 1970 and considering also the Brownstein report of May 17, 1971 --

Q Specifically what in any of these reports are you referring to?

A I have testified -- you want to know what it is?

Q Yes.

A All right. You want me to summarize the whole thing?

Q Yes.

A As I indicated originally -- I am going forward now not backward so you won't refer to it as hindsight -- in 1969 the 10K, something to the effect that the company

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had NOT decided on accounting treatment for the data bank licenses agreement.

Q Where did you get that from?

A I indicated to you 1969 10K.

Q That you saw at the SEC?

A Yes.

(Discussion off the record.)

A It is, I believe, the annual report of 1969 to the SEC, under one, principles of consolidation and accounting matters. "$1,000,000, consisting of 46,656 shares of its Class A common stock and other considerations" and in this particular paragraph, the last sentence, "The Company has not yet determined the appropriate accounting policy for payments in connection with this agreement."

Q And this document which you have just handed me, coming from Exhibit 11, is from the 10K which was filed for the year 1969?

A I say I believe so because it is actually a page that has no description of it. But I know that this is the photostating of the Washington SEC office.

Q Okay.

A And it refers to the year 1969 in several places in it.

MR. KUNEN: Mark it.

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(Document above described was marked as Defendants' Exhibit 19 for identification, this date.)

A Now, as I indicated that was 1969. In 19 -- sometime thereafter, there was, as I indicated, questions as to real intent of the parties between 3i and --

Q When you say sometime thereafter, just so that the record can be clear and we understand each other, give me a point of time.

A Sometime after September 19, 1969, when, for example, the $150,000 additional liability to Fred Von Eugen was never set up as a liability on the records of 3i. Basically, what you had here, up to this point, and continuing through, was clever use of the term of $1,000,000 without a complete description of the entire transaction involving this Fred Von Eugen as well as the Excerpta Medica Foundation, the notes to the annual report of 1970 which I testified to which was prepared after, I believe, after the amended letter agreement between Von Eugen and 3i Company. The entire transaction going through 1972 which I stated, I read from Exhibit 18, plus the fact that the entire cost of the $1,000,000 -- and I say cost, the cost is the term used by the company and as certified by Main Lafrentz -- this "cost", in quotations, of $1,000,000 was written

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off during the fiscal year '72 as a complete loss. This whole transaction, all the descriptions of it, was flagrant --

Q We will get to that later: Is that all you have to say?

A I am just touching on the highlights. There is a lot more.

Q I want you to give it completely. You said you were going to summarize. So summarize, and summarize it completely:and that will be the end of it.

A The summarization in effect is as follows: The defendant Excerpta Medica never received any money under the terms of this aforesaid agreement with defendant 3i Company, Paragraph 135 of the complaint.

Defendant Excerpta Medica never required defendant 3i Company to repurchase the 46,666 shares, Paragraph 136, and in this regard the intent of the parties must be read by what was said in the 10K of 1972 by 3i Company, that the $300,000 that supposedly was to be paid to Von Eugen which is part of the $1,000,000 which was the figure that was set up by 3i Company in effect involved the $150,000 cash or check payment to him and only 7500 shares of the 3i Company common stock A which supposedly was originally $150,000 due to him on the balance which become 30,000

shares, which finally resulted in 7500 shares paid to him.

As I indicated before the data bank license was written off as complete loss in fiscal '72. That in essence the total cost to 3i Company of this data bank license was 7500 shares of Class A common stock issued to Von Eugen plus $150,000 payment to him.

Q Do you know whether the 46,666 shares were ever issued to Excerpta Medica?

A When you say issue, I say this, that were they issued? Well, apparently the balance sheet and statements, the consolidated balance sheet of 3i Company indicates that the shares were reflected therein. Whether they actually ever left the care of 3i Company or its transfer agent or anybody representing 3i Company actually physically delivered to Excerpta Medica, I have no idea at this particular point, but I hope to, as part of my discovery, find it.

It is a very important point and this will be treated in light of what was done with the 30,000 shares given to Von Eugen which were exchanged or in some other way transferred or set up as 7500 shares as previously testified.

Q In Paragraph 12L of your complaint you allege "Those 'shares' held by defendant Excerpta Medica".

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So that you have conceded by your allegations right at the outset that they were held by them, haven't you?

A No, that is why I was very careful to put my quotation marks.

Q What? Around "shares"?

A That is right.

Q And that would indicate that you have a doubt?

A That is right. And I am glad you brought it up because now you understand exactly what I meant by that paragraph.

Q I don't understand at all. I am not a mind reader. However, going on with 121: "These 'shares' held by defendant Excerpta Medica were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 by defendant 3 I Co. filed with the Securities and Exchange Commission, these 'shares' were characterized as 'stock rights, previously granted to certain stockholders to require the Company(3 I Co.) to repurchase 46,666 shares of its Class A common stock (which) have terminated during the year ended June 30, 1972'."

Now, did you come across anything in your investigation as to why the right to repurchase the 46,666 shares terminated during the year 1972?

A Why?

Q Did you come across anything in your investigation as to why the right to repurchase terminated? Was it because of the provisions of the agreement? Was it because there was a default in the agreement? Was it because of anything?

A The only thing I can say to you at this time, without having a chance to really discover or interrogate since I am the first witness, is reading from the 10K which is marked as Defendants' Exhibit 13, for purposes of identification --

Q Defendants' Exhibit 13? You mean the part --

A Yes.

Q All right.

A -- would indicate that the why that you ask for is what I said originally was the real intent of the parties when they entered the first agreement.

Q You said that a dozen times.

A You are asking me why. I am telling you that.

Q I am asking you whether you came across anything in the file as to the reason.

A I came across the statement which is there, 18. The reason, as I say, has not been seen by me so far as -- as far as my investigation is concerned, and the reason, I

might add, is a very important point to me which I am attempting to discover. And what I might say in this regard is this. In view of the fact that the right was to repurchase in 10K of 1972 at the time when the stock had a certain value is even more important in the light of what has occurred all the way through right to now, in view of the price of the stock or the value of this stock at this particular point.

Q Idon't follow that. What are you trying to say?

A If really the real intent of these parties was, as the agreement of September 19, 1969 was set up, and as was permitted by the firm of Main Lafrentz & Co. in allowing this balance sheet to read the way it was, and if in October of '71 the Excerpta Medica Foundation really had the right and the intention to require or request the repurchase, I don't have the stock quotation prices in front of me.

It is certainly a difficult question and something that really will require a certain amount of interrogation why, if there was really any intent rather than just merely a concerted effort to window-dress the balance sheet of this company, in view of that fact that there was value to the shares, certain value then as compared to what it

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is now.

This is a very important consideration not only to myself as a plaintiff here, a representative of a class, but also I am sure it would be a question to be asked of the people who are behind the Excerpta Medica Foundation as well as the SEC.

Q In Paragraph 123 of your complaint you allege that: "The 'aggregate' consideration for the 'purchase at cost' of the data bank license of $1,000,000.00 was determined by defendant 3 I Co. as $300,000.00 for defendant Von Eugen plus 46,666 3 I Co. shares for defendant Excerpta Medica."

Now, now do you reach that conclusion?

A I want you to firstly keep in mind in your question and my particular answer here that there are quotations for the word "aggregate" and also "purchase at cost" in Paragraph 123; correct?

Q I read it that way.

A Did you read it with the quotations?

Q Yes.

A If you did, I didn't hear it. The $300,000 was the letter agreement between 3i Company and Von Eugen.

Q And isn't it a fact that --

A Let me finish, please.

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Q I will let you --

A And apparently the company took 46,666 shares and proceeded to multiply it by $15 a share and that is how they arrived at this figure of $1,000,000 which they indicated as a purchase at cost.

Q And included in that was, I take it, the $15,000 that was paid to Von Eugen?

A $150,000.

Q The $150,000 and 30,000 shares at $5 which is another $150,000?

A No. In referring to the original agreements there wasn't talk of 30,000 shares. There was talk of $300,000.

Q But that original agreement was changed, wasn't it?

A If you note this was admitted by you, Paragraph 123.

Q I am not asking you whether it was admitted or wasn't admitted.

A After that there was an amendment for the $150,000 supposedly owing to Von Eugen, giving him instead 30,000 something, stock or stock rights.

Q Back to your term, he had the same sort of a right, did he not, to put the stock to the company at $5 a share by a certain date or to have them registered?

A Or to accept 7500 shares in exchange for this very

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important right which apparently he got in 1972.

Q But at the time of the balance sheet the agreement to accept 7500 shares wasn't even in existence; isn't that correct?

A But the real intent of the parties was always involved.

Q That is your interpretation as to the real intent of the parties. And you are basing that upon what? We will get back to that.

A Just a second. I want to answer your question Repeat the question.

MR. FELTON: Read the question.

(The question was read.)

A Basing that upon the fact that Paragraph 124 of the amended complaint reads; "Upon the signing of the aforesaid letter agreement with defendant Von Eugen, defendant 3i Co. never reflected on its balance sheet as a current liability thereunder of $150,000."

And your answer on behalf of defendant Main Lafrentz & Co., Paragraph 13: "Deny the allegations contained in paragraph marked 124 except admit that the balance sheet did not reflect the current liability of $150,000..."

Q That is it?

A No. "...but allege it was not appropriate to record

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the balance of $150,000 as a current liability since such liability was satisfied by the agreement dated June 15, 1970 for issuance of 30,000 shares of Class A stock as disclosed in the Note 1 to the consolidated financial statement."

But consider this, sir, that the agreement was in September 19, 1969 and your answer refers to June 15, 1970, the amended letter agreement. Now, we are talking in terms of approximately nine months thereafter and during the nine months the company never ever set up a liability for $150,000 which was owing.

And by the way, I believe that the $150,000 was owing a while before June 15, '70. This is my memory, but the point I am driving at is that the real intent of the parties must be remembered in the light of the fact that there was $150,000 liability that should have been set up on the books of the company if the real intent of the parties in September 19, 1969 was to pay the other $150,000.

Q You are speculating.

A I am not speculating at all. If there is a liability owing there should have been a liability stated. So to merely say there was no reason to set up a liability because an agreement was nine months later entered into for

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30,000 shares indicates the entire intent of the parties was not what was agreed on on September 19, 1969 or for that matter in June of 1970 in the light of the fact that the 30,000 shares in quotations was stock rights which really represented 7500 shares given to Mr. Von Eugen.

Q You have talked about setting up on the books and you have read me 124 of the complaint which says: "Upon the signing of the aforesaid letter agreement with defendant Von Eugen, defendant 3 I Co. never reflected on its balance sheet as a current liability thereunder of $150,000."

Now why are you trying to confuse this record when you are reading a paragraph of the complaint about balance sheet and now you are bringing in the books of the company? You were talking about a balance sheet. That is what we are talking about. Is that correct?

A When you refer to balance sheet and your answer 13 admits that a liability was not set up on a balance sheet?

Q Right.

A I am referring to the books of the 3i Company. Because a balance sheet is something I imagine that is a running type of thing because as opposed to something that you see once a year. For example, in my --

Q I am not a mind reader.

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A It is not a question of mind reader, sir. In the SEC files there are quarterly reports and there are semi-annual reports as well. So when I was referring to balance sheet, I was referring to the assets and liabilities as opposed to profit and losses and balance sheet --

Q You with your training as a certified public accountant know the difference between a balance sheet and books. Isn't that correct?

A The balance sheet is determined from the books.

Q Do you know the difference --

A The balance sheet is determined from the books obviously. A balance sheet is in some summary form of the books.

Q Is there a difference, tell me yes or no, is there a difference between the books of a company and the balance sheet of a company?

A I consider the balance sheet of a company as a summary of the books of the company.

Q All right. You refuse to answer my question.

A I am answering your question. You asked me what I consider it. I am not refusing at all.

Q I won't waste time with you on this. You are refusing to answer my question. You are jumping and we will go on to something else.

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A Let the record speak for itself in this regard.

Q It sure does.

The Von Eugen agreement you read when you examined the SEC files, right, of September 19, 1969?

A The agreement, I think, was in the form of a letter of some kind.

Q Right. And you saw it and made a copy of it?

A Yes.

Q And this is the copy which I have taken from Exhibit 11" .

(Discussion off the record.)

MR. FELTON: Read the record.

(The record was read.)

A Yes.

MR. KUNEN: Mark it.

(Document above described was marked as Defendants' Exhibit 20 for identification, this date.)

(At this time a brief recess was taken)

Q Now, I show you two sheets which were also taken from Exhibit 11, a letter agreement between 3i Company and Von Eugen dated September 15, 1970 and I ask you to identify that. You have read that at the time prior to the time you drew your complaint?

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A Yes.

MR. KUNEN: All right. Mark it.

(Document above described was marked as Defendants' Exhibit 21 for identification, this date.)

Q And that comes from Exhibit 11 as well?

A Yes.

Q By the way, did you ever look into the stock range of the 31 stock on September 19, 1969 when the Excerpta Medica agreement was signed?

A No.

Q Do you have any idea what it was?

A No.

Q Do you know whether it was more than $15 a share, as fixed in the repurchase option?

A No.

Q Under the Exhibit 21 for identification, which is dated June 15, 1970, you noted the provisions and the agreement on behalf of Von Bugen that in lieu of the $150,000, the second payment that he was to receive, he was going to get the rights under that letter.

A Well, there are certain rights that are provided for in this letter, under Paragraphs 1 and 2.

Q And these were contingency things that he

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would have a right to make a decision on as to whether he wanted them or didn't want them; isn't that correct? Now, you have the agreement before you.

A In using the term "contingency" these are the rights according to the letter of June 15, 1970 that Mr. Von Eugen was provided for as far as this particular agreement goes.

Q But they were contigencies which he had the right to make decisions on alone, weren't they?

A A right, what?

Q He had the right to make decisions upon alone.

A Alone? Is that what you are saying, alone?

Q Yes.

A This agreement ran between 3i and him, so obviously if they are referring to rights, just reading this thing baldly here, he had the right to require them to repurchase the shares under, that is under Paragraph 1, for a price of $150,000, which is what is baldly stated here, or at 3i, under, total sole cost and expense, to have them file and use their best efforts to effect a registration agreement under the Securities Act of 1933 covering the 30,000 shares.

Q So these were contigencies that were in his sole discretion to exercise; isn't that correct?

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A According to the agreement of June 15, 1970, yes.

Q Okay.

A But I might add that there was an interval of time between the agreement of June 15, 1970 and the original agreement of September 19, 1969 wherein he was to be given the $150,000 by April 27, '70.

MR. KUNEN: All right. I move to strike that as not responsive to the question. That is the last part that you just volunteered.

Q Now, I take it that you know the difference between a current liability and a non-current liability?

A Not really. I know it but I don't know specifically where you draw the line. I know current liability and I know a non-current liability, but at the same time I truthfully do not have the expertise at this time to tell you specifically the distinction, how many days or weeks or months would make the difference.

Q Give me your best knowledge of what is a current liability and what is a non-current liability and what troubles you so that you can't make the distinction?

A I can make the distinction. The distinction is one, something that is owing very currently and another is something that doesn't have to be paid currently. But that is a layman's description of it and I honestly can't

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go into detail more than that. I couldn't say, for example, if a liability of 180 days is to be treated differently than a liability of 240 days. I don't have this at my grasp. But in answer to your question I know, obviously, the distinction between the two. For example, accounts payable I am sure is a current liability. Notes payable, I am not sure. A mortgage is a non-current liability. I am just giving you a few examples in answer to your question.

But I just say this. It seems to me that the $150,000 that was owing to Mr. Von Eugen, under the original agreement of September 19, 1969, was a liability or should have been a liability if that was the real intent of the parties in that agreement.

Q You mean under the letter of September 19, 1969, Exhibit 20, where it was provided that the remaining $150,000 was to be due and payable to you 180 days after the closing date?

A Yes. "You" meaning Mr. Von Eugen.

Q Yes, that is right.

A To me that was a liability.

Q Not a current liability?

A I didn't say that.

Q Okay.

A I said a liability. Whether it was current or non-current, if it was really meant to be paid, it was a liability of the company.

Q But you, in Paragraph 124 of your complaint, said: "Upon the signing of the aforesaid letter agreement with defendant Von Eugen, defendant 3 I Co. never reflected on its balance sheet as a current liability thereunder of $150,000."

Now, the balance sheet that you were talking about, I take it, was the balance sheet which Main Lafrentz certified with the qualified certification which covered the fiscal year ending June 30, 1972; right?

A No. No. Certainly not.

Q Which balance sheet were you referring to?

A I am talking about the internal balance sheet of the company, a summary of the books, because first of all I noted here, just now, the word "current." I used the term "current" as a layman not as an accountant, number one, and secondly, I referred to upon signing the letter agreement of September 19, 1969. I wasn't talking about or referring in that paragraph to an annual report at the end of the fiscal year which is June of '70. I meant this. I meant as an attorney, when I said as a layman, not referring to my abilities as an accountant at this

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particular point in drafting this complaint, what I meant was, and I say now is that upon signing the aforesaid letter agreement, referring to the agreement of September 19, 1969 which you have marked as Exhibit 20 for identification, that at this time 3i never reflected on its balance sheet. I am not talking about a balance sheet, a certified balance sheet at the end of the year, I am talking about a balance sheet, a running account of its assets and liabilities which should be part of the records of any business and my statement was at that time they never set up a current liability of $150,000.

Q Now, will you educate me as to where a company, what book a company would keep a balance sheet in other than a quarterly balance sheet or semi-annual balance sheet which is made up unaudited but what book, where in the books would there be a balance sheet? A running balance sheet? You studied, I didn't. You studied and became a C.P.A.

A Twenty-five years ago, sir.

Q All right. But I didn't study. Mine is from experience. You tell me.

A Maybe your experience might beeeven superior to mine at this stage. I just say this to you. When I meant a running balance sheet --

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Q You didn't use the term "running balance sheet."

A I didn't use it? Who used it?

Q You used it but you didn't use it in 124.

A In my answer, when I used the term "running balance sheet" it seems to me that on the books of the 3i Company, or for that matter any organization, business organization that keeps records there must be ledger sheets, for example -- and I am looking now at the consolidated balance sheet for the year 1970, just picked it up, which is Exhibit 13 for identification, cash. There must be somewhere a ledger sheet on the books of the 3i Company, cash. For example, in the year --

Q All right. You don't have to go into it.

A I want to explain what I told you.

Q You don't have to elaborate. You are not talking about a balance sheet. You are talking about a ledger sheet, aren't you?

A A ledger sheet.

Q Okay.

A But actually the ledger sheet would be at any particular day of the year available to be set up as a balance sheet. That is what I meant by a running balance sheet.

Q You didn't use the term "running" in your

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complaint.

A No, I didn't. But I think it was understood in the answer to the complaint in view of the fact of the answer to the paragraph which I previously read.

Q The answer was referring to the balance sheet and the balance sheet was at the end of the year. I ask you this question: When the agreement of June 15, 1970, which is Exhibit 21 was executed, whatever the indebtedness was to have been to Von Eugen for the payment of $150,000 no longer existed and there was a substitution of an obligation to deliver stock to him; isn't that correct?

MR. FELTON: Repeat the question, please.

(The question was read.)

A Not completely correct because the agreement is very equivocal in this sense, that it refers to December 1, 1970 as to when 3i shall issue the certificates to Mr. Von Eugen. So firstly, we question why, if June 15, '70 was the letter agreement, were the certificates to be issued to be on December 1, 1970, which was well after the June 30, 1970 date of the fiscal year.

MR. KUNEN: Please read the answer.

(The answer was read.)

Q This Exhibit 21 of June 15, 1970 was signed by both parties, was it not?

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(Discussion off the record.)

MR. FELTON: What is the question, please?

(The question was read.)

A I have no way of knowing the date this was signed. I see a letter here dated June 15, 1970.

At this point I would like to call your attention to this letter, dated October 23, 1970, from 3i Company to Miss Agnes C. Creedon, Branch Chief, Office of Filing and Reports of Securities and Exchange Commission, Washington, D.C., letter dated October 23, 1970 and received by the SEC, a stamp here, October 26:

"Dear Miss Creedon: The fiscal year of the 3i Company/Information Interscience Incorporated ended on June 30 and its Annual Report on Form 10K is due for filing on October 27. An extension of forty-five days..." -- that is crossed out and in pen or pencil is written above "30 days" -- "...until December 11..." -- and that is crossed out or something like that and above that is written "Nov. 27th."

Q That is all done by the SEC?

A Yes. "...is respectfully requested. Notwithstanding the granting of the extension, we will file the report earlier when available.

"This request for extension is necessitated by two

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factors. First, our independent public accountants, Main Lafrentz & Company have been unable to complete their examination of the Company's financial statements due to their heavy workload and other staff personnel problems. Second, the Company is in final negotiation of certain transactions which are likely to affect the information to be contained in Form 10K."

By the way, there is underlining under "certain transactions" with a question mark on the border.

"It would seem inappropriate for us to file Form 10K until these transactions are completed so that these transactions can be fully disclosed in this filing.

"We will appreciate your prompt acknowledgement of this extension. Sincerely," signed -- and underneath it G.L. Brodsky, President.

Now here is the penciled notation, on the photostat, on the copy from the SEC file, Washington, D.C. "By telephone today -- Henry Clark - Exec. V.P. agrees to amend request to a 30 day extension. Amended request is granted." Then there is something there. "11/5/70 (Over)." Next page: "Company is negotiating agreement with licensor in Europe which has been unable to..." -- it looks like -- "...or to arrange..." -- or something like that, the word is illegible -- "...believe agreement involves adjustment

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of payment and should be settled in a week."

Q All right. Now you said all that, what has that to do with Von Eugen?

A I don't know when this agreement was signed. And by the way, before we go into that, would you consent to have this marked as Exhibit 22?

Q Yes, sir.

(Document above described was marked as Defendants' Exhibit 22 for identification, this date.)

MR. FELTON: What did I say?

(The answer was read.)

A (Continuing) I don't know when the June 15, 1970 letter agreement -- when I say June 15 letter agreement, that is the date on the top of the letter, when this was signed, you see? It might very well have been signed in October or November.

Q You are speculating.

A Pardon?

Q You are speculating.

A You asked me questions and I am saying this, that as far as I know, my investigation has turned up the letter that I read, which is Defendants' Exhibit 22 for identification as well, and it must be read in connection with

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everything else that went before or after in this transaction.

Q You didn't say that in Paragraph 126 of your complaint, Paragraph 125 you say: '"Defendant 3 Co. never paid the balance of $150,000.00..."

A What are you reading?

Q Paragraph 125: Defendant 31 could never pay the balance of $150,000 "due" to defendant Von Eugen on or about April 7, 1970.

A Which by the way was admitted by Main Lafrentz.

Q And in Paragraph -- you are not properly stating what is in the pleading, but the pleading speaks for itself.

A Let me read exactly what I said then. Your answer was: "Deny the allegations contained in the paragraph marked 125 except admit that the $150,000 was satisfied by the agreement dated June 15, 1970." So your answer speaks for itself. But my understanding of the answer was that the balance was never paid, $150,000 due -- in quotations -- was never paid to him.

Q All right. We are finished with that one. In Paragraph 126 of your complaint you say: "This 'balance due to Von Eugen' of $150,000.00 was changed into 30,000

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shares of 3 I Co.'s common stock Class A for defendant Von Eugen by a second letter agreement dated June 15, 1970."

That is your allegation of the complaint after your investigation; right?

A That is an allegation based on the fact that there was a second letter agreement dated June 15, '70. But as I say to you now that is as far as it goes. It was dated June 15, 1970. It may very well have been signed in September, October or even prior to November 27, 1970 and this is something which will be the subject of part of my inquiry.

Q You didn't question the fact, after your investigation and all the time you spent looking into this matter, that there was this modification by this letter agreement, and you alleged it in your complaint, didn't you?

A Alleged what in my complaint?

Q That that was the fact.

A What fact?

Q That the balance due Von Eugen was changed into 30,000 shares of 3i Company by a letter dated June 15, 1970.

A I said letter dated June 15, 1970. I didn't say when this was executed. I didn't have that at that time.

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Q What do you mean you didn't have it at that time?

A I didn't have it and I still do not have the date that this agreement was executed.

Q You had it in your file at all times, Exhibit 21, didn't you?

A And that is exactly the way, not exactly but this is the basis for 126, that by a second letter agreement dated June 15, 1970, the execution date will depend on a number of factors and that will be information that is currently in certain of the defendants' possession.

As part of my investigation I found in the SEC file a copy of this letter, agreement dated June 15, 1970. I pointed out to you, sir, that this particular June 15, 1970 agreement strangely refers to December 1, 1970 as the date when Si is to issue the certificates. And this must be read in conjunction with Defendants' Exhibit 22 for identification wherein talk is mentioned, not talk but there is an oral note regarding a renegotiation of the agreement. So I have no way at this time of knowing when this agreement was executed. I know it was dated June 15, '70.

Q You are mixing apples with pears because you are referring me to a comment in the SEC files which

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was apparently made by somebody in the SEC which has no reference whatever and nothing to do with the Von Eugen agreement.

A Except the Von Eugen agreement is dated June 15, '70.

Q Why can't you concede a simple fact which is so obvious?

A I will concede this. On June 15, that a letter dated June 15, 1970 provided for issuing of certificates December 1, 1970. This may very well be, and this is pure speculation, at the same time it is something considered speculation, even though the agreement was dated June 15, '70, it is quite possible it was executed sometime several months thereafter.

Q Have you any evidence to that effect?

A No. That is why it hasn't been alleged in the complaint at this time. But I brought it to your attention as it was brought to my attention in my investigation. And that explains why I drafted 126 in the form it was, which are the facts that I had before me.

Q In Paragraph 128 of the complaint you have alleged that: "These 'shares' held by Von Eugen were never repurchased by defendant S I Co. and in the Report for fiscal 1972 of defendant S I Co. filed with The Securities and Exchange Commission these 'shares' were

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characterized as 'stock rights' wherein defendant 3 I Co. 'has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of that stockholder's rights to require the Company (3 I Co.) to repurchase or register 30,000 shares'.".

First, where is the report that you are referring to?

A The report I am referring to is what is described in the paragraph you just read.

Q I want the physical document that you used to make these allegations.

A The document or this portion of the document?

Q The applicable portion of the document.

A Well, I refer you to Defendants' Exhibit 18, that is one of the sources for it. When I say for it, I mean the quotation which is a portion of 128.

Q Is there anything else?

A Let me read to you what 128 is -- not 128, Defendants' Exhibit 18 as it applies to Paragraph 128 of the complaint. Quote, not quote but this is what it is in Defendants' Exhibit 18 for identification: 'The Company has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation

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of that stockholder's rights to require the Company to repurchase or register 30,000 shares."

That is contained in the beginning of the first full paragraph on Defendants' Exhibit 18.

Q In your examination of the SEC files did you come across a copy of the agreement?

A No.

Q And in your complaint in Paragraph 128 you put in quotations "These 'shares' were characterized as 'stock rights'." Is there anything in that paragraph which characterizes them "stock rights"?

A Yes. Stockholder's rights.

Q. And you consider the term stockholder's rights to require the company to repurchase as equivalent to stock rights?

A That is why I used quotes.

Q But you didn't put stockholder's rights in your quotes.

A No. I said characterized as. The quotes were not quotes from that particular portion of the paragraph but that was quotes to indicate what I considered them to be characterized as.

Q Isn't it a fact that all that happened as we have been through before was that in the letter of

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June 15, 1970 there were certain options granted to Mr. Von Eugen in connection with the shares which were to be issued to him on December 1, 1970?

MR. FELTON: Will you repeat the question, please?

(The question was read.)

MR. FELTON: Repeat it again, please.

(The question was read.)

A No. My answer cannot be given without qualifications. If you wish, I will give them to you.

Q You haven't hesitated before. Why are you hesitating now?

A On April 27, 1970 Mr. Von Eugen was entitled to $150,000 in cash or a check, cash payment I should say, pursuant to the original agreement of September 19, 1969. Up to this time, the 3i Company never reflected a liability of $150,000 owing to Mr. Von Eugen.

Q You are speculating there. You don't know. Right? You have no evidence whether they did or didn't reflect a liability on the books, now, we are talking about, not on the balance sheet.

A Subject to whatever testimony was before, I will let my testimony stand. But to continue rather than to answer what you are saying, speculation, and which I deny,

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from my interpretation of the Main Lafrentz answer to 124 and the fact that 3i never paid the balance of $150,000 to Von Bugen on April 27, '70, continuing until a letter agreement dated June 15, 1970 which is almost two months thereafter, which in part provided for the issuance of these certificates, approximately six months thereafter and in the light of the letter dated October 23, 1970 to Miss Creedon of the SEC, which is Defendants' Exhibit 22 for identification, the real intent of the parties must be examined and especially in view of the 1972 10K which I previously referred to, in particular that portion found on Defendants' Exhibit 18 for identification must all be considered.

Q Which adds up to the fact that you have not answered my question and you decline to answer it.

A Oh, no. I have answered the question in my way because I don't know when that June 15, 1970 letter agreement was actually executed. There is no explanation in that agreement why December 1, 1970 was the date for the issuance of the certificates unless perhaps it was the fact that the execution of this letter agreement dated June 15, 1970 might have been sometime as late as October or November of '70.

Q You are speculating.

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AFTERNOON SESSION

October 12, 1973
1:30 p.m.

ROBERT R. FELTON, having been previously duly sworn, resumed and testified further as follows:

EXAMINATION (Continued)

BY MR. KUNEN:

Q At paragraph 129 of your complaint you have alleged:

"The total consideration for the acquisition by defendant 3i Co. of the aforesaid data bank license was $150,000 plus 7,500 shares."

Is that the allegation that you want to have stand?

A No, I would like to have it stated as follows:

"The total consideration for the acquisition by defendant 3i Co. of the aforesaid data bank license was in effect $150,000 plus 7,500 shares of common stock class A."

Q That is the way you would like to have it said?

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A I am not speculating. You are calling for me to answer a question based upon a document or letter, rather, dated June 15, 1970, which was apparently filed with the 1970 10K of 3i Company. Apparently, I say, and if that is the case that was filed in November of '70. So now there is no way of my knowing at this time when the actual date of the execution of this letter agreement was held and had and especially in view of the fact of what I consider the possibility that --

Q You are not answering my question. You are distorting my question. You are answering it in your own way.

A I am answering it the best way I can.

Q I have no way of stopping you. If this is the way you proceed, I just have to let you proceed. But I am telling you that I feel I am not going to go back on the record now after you made all these speeches to get exactly what my question was but I know you didn't answer it.

MR. FELTON: I move to strike those portions which are colloquy.

MR. KUNEN: You can move to strike whatever you want. But I feel that way.

MR. FELTON: Also I move to strike that.

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Q According to Exhibit 18 which was filed with the SEC, Von Eugen entered into an agreement to obtain 75 -- or at least it reads: "The Company has entered into an agreement with the stockholder" and that is Von Eugen -- "to issue 7500 shares of its Class A common stock in exchange for the cancellation of that stockholder's rights to require the company to repurchase or register 30,000 shares."

MR. FELTON: Off the record.

(Discussion off the record.)

Q So that at this report that was the end of the 30,000 shares; he made a new deal and he was now going to get 7500 shares; isn't that correct?

A What you read me is on the 1972 10K, but my question to you, sir, is why?

Q Don't question me before you start.

A Out loud, why? If he really had 30,000 shares why does he accept at this time, 1972, 7500 shares?

MR. KUNEN: Let's adjourn now. It is ten of 1:00. We will adjourn to 1:30.

(Whereupon, at 12:30 p.m. a luncheon recess was taken.)

A This is what I understand now what actually it cost 3i Co. for this data bank license, in view of the actions of all of the parties up to date and inactions of the parties up to date.

Q We are talking in this complaint, so far as my client Main Lafrentz is concerned, of a balance sheet which was qualifiedly certified with a certification, I believe, of November 20, 1970.

The $150,000 that you are referring to --

A Just a second. What do you mean by a qualification? How was it qualified?

Q Whatever it says, the certificate is qualified, is it not?

A Would you like to put into your question how it was qualified?

Q I don't have to put it into my question. We know whatever it says, it says on the qualification, and we have seen it, right? I don't have to go in and restate it at this particular point.

A I thought there was a reason for your stating "qualified" statement.

Q It is a qualified certificate. It is a fact. Now, do you mind if I go on with my question?

MR. KUNEH: Read it back to me.

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(Question read.)

Q In paragraph 129 of your complaint is the amount of cash that was paid to von Eugen, is that right?

A Yes.

Q The 7,500 shares that you are referring to in paragraph 129 of the complaint is the result of the agreement which was made with von Eugen some time during the fiscal year which ended June 30, 1972, is that correct?

A Yes.

Q In that paragraph you have completely disregarded the 30,000 shares which von Eugen was given the right to call upon the 31 Co. to repurchase at $5 a share?

A I don't think that is a question.

Q I am asking you.

A What are you asking me?

Q I say that in --

A I thought you made a statement.

Q I asked you.

A What did you ask me?

Q Isn't that a fact?

A What?

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MR. KUNEN: Repeat it for him.

(Record read.)

A I have not disregarded it. I have given it a lot of regard. That is why I stated, as I did in paragraph 129, that the total consideration for the acquisition by defendant 3i of the aforesaid data bank was in effect $150,000 plus 7,500 shares.

Q It is the change you just made?

A This is not a change. It is my testimony as it stands now in answer to your comments on 129, and considering the facts that I have testified to previously as to all that went by, including the statements by defendant 3i, in its fiscal 1970 10K.

Q In what way have you given consideration in this paragraph to 30,000 shares which was subject to the repurchase agreement at $5 per share?

A I have given regard to 129 as a summary.

Q Isn't it a fact that --

A Just a second, please, sir. As a summary of all the previous paragraphs relating to the agreement between these parties and the fact that the 1972 10K reflected a portion of the real intent of the parties, plus also that Excerpta Medica Foundation as of July 25, 1973 has never filed suit.

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Q Why don't you stick to a question?

A You are asking me a question. I would like to finish, please.

Q Just a minute.

A Has never filed suit despite the refusal by 3i --

Q I have not reached Excerpta Medica; I have talked to you about the von Eugen shares.

A I said that the 7,500 shares A plus the $150,000, as stated in 129, I consider to be based on the investigation that I have had, the total consideration for the acquisition of the aforesaid data bank license.

Q Before you put that paper back, you have been referring to a paper. I take it it is an annual report for 1973 on the 3i Co., is that correct? Or a proxy statement?

A It is a prospectus.

Q May I have it?

A Yes (handing).

Q What is this Insyte Corporation? Is that connected with the 3i Co.?

A Yes.

Q In what respect?

A If you will read it, you will see.

Q Let's save time. Just tell me. I don't want

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to read it. Is it a change of name? What is it?

A It is a change of name, among other things, I guess. I have not had a chance to spend too much time on it.

MR. KUNEN: I want to mark it. It is entitled A Prospectus of the Insyte Corporation.

(Document, above referred to, was marked Defendants' Exhibit 23 for identification, this date.)

MR. KUNEN: This is a prospectus dated July 25, 1973 by Insyte Corporation for 502,820 shares of common stock par value a penny per share.

Q Will you tell me how this Exhibit 23 came into your possession?

A It was mailed to me.

Q In your capacity as a stockholder of 31 Co.?

A Yes, I believe so.

Q Getting back to my question with regard to paragraph 129 of the complaint, you are talking about the total consideration for the acquisition by defendant 31 Co. of the aforesaid data bank license, and you are talking as of September 19, 1969, the date of acquisition, are you not?

A Oh, no.

Q As of what are you talking? As of what date

are you talking?

A I am talking as of the date of the complaint. Not talking, but that is what was the situation as of the date of the complaint.

Q What is the complaint supposed to portray? Is it supposed to portray an acquisition cost as of the date of the acquisition?

A No.

Q All right.

A That complaint portrays what was done in this particular case. Previous statements, especially those in 1970, as it really was the intent of the parties, as seen through fiscal 1972.

Q So that you are giving a situation in this complaint and in this allegation as of 1972?

A No.

Q Then I don't understand you.

A We have a number of paragraphs here relating to certain facts that are involved. Paragraph 129 is a summary type. Showing what really was involved as opposed to what was stated.

What you actually have here is this. You have 1 million, purchased at cost, stated on the assets of the balance sheet of 3i Co. on the annual report of 1970,

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where in effect there was $150,000 plus 7,500 shares of common stock cost to 3i. And, furthermore, this $1 million data bank item was really in effect worth less, as indicated by its complete write-off, also, in the year 1972.

Q We will get to the write-off later. But are you purporting to give the consideration for the acquisition as of the date of acquisition?

A No. But more the intent of the parties all the way through to the original agreement. And also the amendment which was dated June 15, 1970, executed -- no date as yet.

Q I ask you again, as of what date are you purporting to state the consideration for the acquisition?

A In paragraph 129? As of after June 30, 1972. As of the date after the filing of the fiscal 10K for 1972, as finally determined therein by the reports filed with the SEC.

Q And in doing that you have completely disregarded the consideration or the value of the 46,666 shares, which was given to Excerpta Medica?

A I have given it every regard and see --

Q Just a minute.

A You don't want to know what?

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Q I will ask you. How have you given it regard?

A In the following fashion. Firstly, going back to Von Eugen, the $100,000 due and payable ~~on October 30, 1~~970 was never set up as far as I know on the records of the company.

Q Just a minute, just a minute. I am asking you a question and you are prolonging this examination.

A Then I will go right to the point of the shares then without, going into this other regard, which I will reserve for a later time to say. This thing is this, the shares of 46,666 shares, using this term "shares" in quotations --

Q Whatever that means.

A Whatever that means. Whatever "shares" means.

Q I can't guess your mind.

A I can't guess the minds of these people. I can only see the intent of what was going forward.

Q All right, go ahead.

A To be repurchased at $15 a share on Ooctber ~~1972,~~ which was never done.

Q They were not to be repurchased --

A Allow me to finish.

Q They were to be repurchased if they

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exercise their contingent rights?

A And they never exercised their contingent rights. Now, thereafter, as indicated on the 10K of 31 for fiscal 1972, Defendants' Exhibit 18 for identification, as the rights previously granted to certain stockholders, to require the company to repurchase 46,666 shares have terminated during the year --

Q Where are you reading from?

A June 30, 1972 (indicating).

Q Which paragraph?

A It is the second paragraph, the second sentence. Therefore the rights to require repurchase have terminated according to the exhibit. Excerpta Medica in response to paragraph 135 of plaintiff's amended complaint wherein it was alleged defendant Excerpta Medica never received any money under the terms of this aforesaid agreement with the defendant 3i Co., in answer on behalf of Excerpta Medica, answering paragraph 135, it admits the allegations therein and further answering said paragraph it alleged that its demand was made for the money due under the agreement of September 19, 1969, and payment was not made by defendant 3i Co.

Paragraph 136 of the amended complaint, the

defendant Excerpta Medica never required the defendant 31 to repurchase the 46,666 shares.

Answering, it alleges that request was made that the defendant register the shares which it obtained under the agreement of December 19, 1969, but this said registration was refused.

The prospectus which was marked as Defendants' Exhibit 23 for identification, dated July 25, 1973, page 31, last paragraph, and I might say at this late date, July 25, 1973,

> "Excerpta through its counsel has advised the company that it intends to file suit for an undetermined amount of damages for alleged breach of contract."

Q So what have you answered? Does that answer my question, do you think?

A Yes, because apparently there was not only an expiration of the so-called rights to repurchase in October of 1971, but 31 Co. did not consider it binding on them to register the shares for Excerpta Medica, and, furthermore, that is as of July 25, 1973, despite a refusal, Excerpta Medica through its counsel has never taken any action to insist on a binding agreement.

The intent of the parties, once again, sir.

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Q I don't understand what you mean by the intent of the parties.

MR. FELTON: I move to strike that portion of the statement of Mr. Kunen as colloquy.

Q You have clarified it because you said 129 is talking as of 1972. That is what you said. Do you want to strike that, too?

A Pardon? Do I want to what?

Q Do you want to strike my comment, too?

A No, but the sum total of what was paid, and at the same time it reflects on the true intent of the parties, as per their agreement and as per their statements or omissions.

Q And you arrive at the true intent of the parties because people made modifications later on and made changes, and there were changing circumstances, so you are telling us here that all these things that happened later on show the true intent of the parties despite the fact that years expired and circumstances expired; is that right?

A When you consider everything involved here, and consider the fact that an item which represented 62 per cent of the total assets of this company was on the balance sheet as a purchase at cost and further

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consider aside from materiality of this the fact that, basically speaking, what you really had in essence here was a payment of $150,000 with lettered or legended stock.

During the first year a change in the agreement, if it was done within a year, maybe it was done a few months thereafter. Consider further the fact that there was a relinquishing of rights to require repurchase of 46,666 shares at $15, which is $750,000, never requested in October of 1971 by the foundation. And further relinquishing of 30,000 shares at $5 a share, a right for another party, Von Eugen, for an exchange of a mere 7,500 shares.

Consider further this asset which was in 1970, 62 per cent of the total assets, being written off completely as worthless in 1972.

You have here something that requires intent to be determined and ascertained.

Q But you do not know the reasons why the 46,666 shares were not put to the company at the $15 price, do you?

A Which represented $700,000 worth of money.

Q Do you? Answer my question.

A I do know -- I don't know that, but I do know that

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in 1972 the company considered them not stock but stock rights which expired. And, furthermore, that the company refused to register when requested these shares and, furthermore, the Excerpta Medica Foundation had this contingent, using your term, right, to require registration, never took any legal action.

So you have here a course of dealing which is a continuous thing, not just an individual one or two items.

Q You don't know the reasons for the action on the part of Excerpta Medica and you don't know the reasons for the action on the part of 3i, you have no idea whether they are valid or invalid? Is or is that not a fact? Can't you answer a direct question?

A I can answer direct because I say this, there are certain things you can't prove with direct facts but you can have circumstantial evidence and inference.

Q What are the inferences and circumstantial evidence?

A At this particular time I have testified as to what I consider to be the circumstances, and the inference I made is contained in paragraph 129 of my amended complaint, wherein I state, as you have requested me to amend, the total --

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Q I have not requested you to amend anything.

A You have asked me to consider and give you what 129 represents, and I have. As the total consideration for the acquisition by the defendant 3i Co. of the aforesaid data bank license was in effect $150,000 plus 7,500 shares of common stock A. That is my inference based upon the circumstantial evidence I have so far gleaned from all I have read in my investigation of the SEC in New York and in Washington.

Q Now, with respect to the 30,000 shares, Von Eugen's shares, which he had the contingency of putting to the company at $5 a share, and then entered into this agreement to take 7,500 shares.

Do you know the reason why he did that and the reason why the company entered into an agreement to do that with him?

A I do know this --

Q Can you answer that?

A I will. I will tell you what you want to know. Based upon my understanding, I do know this, that Von Eugen received only $150,000 plus 7,500 shares, and I do know he relinquished his right to insist on the payment of $150,000 on April 27, 1970 and, strangely, accepted lettered or legended stock in that very same

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amount.

It is hard to believe that if a man is entitled to $150,000 on April 27, 1970, and dealing with a going concern as it was, 3i Co., that he would be agreeing to take stock in the same amount, which he would not be able to convert into cash, which should have been according to the terms of the first agreement, paid, so-called on the barrel head on April 27, 1970.

Instead he agreed to take legended or lettered stock in the same amount, to be paid in the future, which he never exercised and, instead, accepted 7,500 shares.

Q Have you ever talked to Von Eugen?

A Von Eugen, as far as I know, is in Switzerland.

Q Can't you answer that question?

A I have never spoken to him. That is my answer.

Q All right. That is the answer.

Have you ever corresponded with him?

A Only to the extent of requesting that a service of a copy of the amended complaint and the summons be served upon him.

Q How do you know that this agreement is dated April 27, 1970?

A What agreement is dated April 27, 1970? There is

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no agreement as far as I know for April 27, 1970.

Q Which year did you say -- you used the term April 27 a few minutes ago.

A Yes, I believe that the April 27 date, 1970 -- well, I believe I see it. In Defendants' Exhibit 21 for identification, paragraph Second -- strike that. I will give it to you another way.

Q Where do you get April 27, 1970? What does it signify?

A On Defendants' Exhibit 21, marked for identification, second paragraph, this is a letter from 3i to Mr. Fred Von Eugen in Switzerland.

"This will confirm our understanding that the second installment of $150,000, which was to have been paid to you on or about April 27, 1970, pursuant to the letter agreement."

Q That is where you got the date?

A Yes. I guess another way of doing it would be if you would agree to take --

Q Let's not talk about apples and pears again.

A The original agreement of April 1969 refers to 180 days thereafter.

Q We were not talking about that. You injected April 27, 1970, and now I know why you injected it.

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And now I ask you categorically, do you know the date when Mr. Von Eugen agreed to take 7,500 shares for the 30,000?

A It would be any day before the filing of the 1972 10K. Apparently within a year before.

Q I don't want you to speculate. Do you have any knowledge as to the date it happened?

A Only what I have given you on Defendants' Exhibit 18 and wherever also it appears in the 1972 10K.

Q On Exhibit 18 it says -- it doesn't give you the date of the exchange, does it?

A No.

Q That is of the production agreement with Van Eugen?

A If it was a formal agreement.

Q You testified a few minutes ago that the Excerpta Medica data bank license was valueless, is that right? Do you recall saying that?

A Well, I characterized it as worthless in the sense that it was written off as a complete loss.

Q Where do you get that from?

A Off the record.

(Discussion off the record.)

A For one thing, I would like to point out Exhibit 10,

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Defendants' Exhibit 10 marked for identification, the summary of operations for years ended June 30, 1968 to 1972, under 1972 extraordinary losses, cost of this investment in data bank license, $1 million.

There was a write-off for the year 1972. A write-off of $1 million.

Q What was the reason for the write-off? That is what I am waiting for.

A Firstly, I am pointing out the write-off.

Q All right. You showed that to me. That was for the fiscal year ended when?

A June 30, 1972.

(Witness examines documents.)

A Each time I look for something it gets more mixed up.

Q You are the only one handling it.

A In notes to consolidated financial statement, and it is apparently part of the 1972 10K, the first paragraph, I would like to read it. If you want to mark it for identification --

MR. KOHEN: Mark it.

(Document, above referred to, was marked Defendants' Exhibit 24 for identification, as of this date.)

A The $1 million cost, I will read from this note, "the $1 million cost (76,766 shares of Class A common stock issued in 1969, in 1970,) on obtaining this data bank license has been charged to current operations as an extraordinary item. This amount was deemed not to be recoverable through future operations because of the losses sustained and the annual fee obligations under the present agreement."

There is more said but this is in regard to your answer.

Q Complete what the "more" is.

A "Management is currently negotiating with Excerpta to reduce the company's operating responsibilities as well as the aforementioned financial obligations under this agreement. The future operational status of these services are dependent on the outcome of these negotiations."

Now --

Q Is that all?

A Yes. Now, this, I believe, is part of the June 30, 1972, the year ending June 30, 1972, 10K.

If you will note, the 76,660 shares are lumped together in this note. I also want to call your attention to another portion of the same 10K, wherein this

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aforesaid agreement between Von Eugen and 31 Co., wherein Von Eugen received 7,500 shares of 31 Co. stock, was stated.

Now, what I said before about intent and circumstances and inferences is this, sir. I am referring again to Defendants' Exhibit 18. If Defendants' Exhibit 18 and Defendants' Exhibit 24, both marked for identification, are from the same 10K.

Q Don't you know whether they are or not?

A I suspect they are. I don't know for sure, in line with what I said to you that individual pages sometimes do not come through with numbers or references. But each one of them refers to, in some way in them, the year ended June 30, 1972.

As I say, if both of these are June 30, 1972 10K's, the same thing, different portions of it, in one portion a lumping of 76,660 shares are indicated for Excerpta Medica Foundation license, which is being written off, and another place there is the description that 30,000 shares rights were expired and -- or not expired -- were canceled, I should say, for 7,500 shares, would explain what I said before about the circumstances and inference in view of the fact that there is no identity of the stockholder or stockholders, as described in

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Defendants' Exhibit 18.

Q Finished?

A Yes, except this, when I was looking through Exhibit 11, I came across something else which is in some respects bearing on inferences or circumstances.

Since you are marking these as defendants' exhibits, I would like you to mark this as Defendants' Exhibit 25 for identification. Would that be all right, which I plan to refer to?

(Document handed to counsel.)

MR. KUNEN: If you will identify where this comes from.

THE WITNESS: This is apparently a portion of the 1970 10K, I believe, of 3i Co. Also photostated from the files of the SEC.

(Document, above referred to, was marked Defendants' Exhibit 25 for identification, as of this date.)

A I would like to read to you item 4(b) on Defendants' Exhibit 25 marked for identification.

"(b) In June 1970 the registrant's agreements with Excerpta Medica Foundation were modified by cancellation of the registrant's obligation to make a cash payment of $150,000

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in April 1970. In consideration, the registrant will issue --"

Q Are you talking about Von Eugen?

A No. We have been talking about Von Eugen but this particular document that was Defendants' Exhibit 25 for identification is talking about Excerpta Medica. I would like to read it again, if you see what I mean. I will note this was your inference from what I read.

Q I have no made any inference. I am trying to understand your testimony, and you talk so much, you are doubletalking me.

A There is no doubletalk at all.

Q I can't follow you. You are jumping --

A If there is anything misleading I suggest it will be found in item 4(b).

Q What is misleading is your continuous refusing to answer questions and testifying the way you want to testify and mixing things up.

MR. FELTON: I move to strike everything gratuitous that you said.

MR. KUHEM: All right, now go ahead.

MR. FELTON: They have no regard to any of the questions and answers in this deposition.

A I am reading from Defendants' Exhibit 25 marked

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for identification, item 4(b) wherein it is stated:

"In June 1970 the registrant's agreements with Excerpta Medica Foundation were modified by cancellation of the registrant's obligation to make a cash payment of $150,000 in April 1970."

Q Whatever that means.

A It means this, that this was not the facts. The facts were that there was no agreement with Excerpta Medica regarding $150,000 balance. Rather, as you suggested earlier, with Van Eugen.

Q I didn't suggest anything, and whatever the things says it says and it has nothing to do with my statement.

MR. FELTON: I move to strike that portion of the comments by Mr. Kunen as gratuitous.

Q Your Exhibit 24 which is from the 10K of the year 1972, is that correct?

A I believe so.

Q Is that the basis for your assertion in this case that the data bank license was worthless to the defendant 3M Co.?

A Yes, and I believe there may have been some other reference in the 10K which I have not been able to find.

Q When I finish with your deposition I don't

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want to leave anything open. Take as much time as you want, give me any other reference, and conclude and give me a categoric answer that leaves nothing open.

A I have looked through the papers and this is the only paper that I found that was photostated by me that has bearing on the fact that this amount was deemed not to be recoverable because of the losses sustained, and therefore, I characterized it as worthless to the defendant 3i Co.

Q I don't know how many times you did it, but I assume that is the basis for your allegation in paragraph 55 of the complaint?

A As 55 applies to the data bank license being characterized in the complaint as worthless to the defendant 3i Company, and as contained in Defendants' Exhibit 24, marked for identification, wherein the amount was deemed not recoverable through future operations because of the losses sustained, yes.

Q So that exhibit, without beating around the bush --

A I am not beating around the bush and I don't like you to describe it, but the reference to Mr. Brownstein in 55 --

Q It doesn't make any difference, you make

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other allegations to that effect, that the data bank license was worthless to the 3i Company, and I am asking you wherever in this complaint you say that this data bank license was worthless to the defendant 3i Company, the basis for your making that statement is what is contained in Exhibit 24? Is that right?

A And any other sections of the 10K 1972 which I have not been able to find in Exhibit 11.

Q I ask you to find it. Look for it.

A I have looked through all Exhibit 11 and I have not been able to find it.

Q What is your best recollection of what they say, or what you recall them saying?

A More or less the same as on Exhibit 24.

Q All right, that is it.

A Except perhaps phrased in a different way.

Q And if there is nothing else contained in the 1972 10K then Exhibit 24 is your complete basis, is that correct?

A Yes. Considering the word "worthless" in the complaint as a characterization of the events.

Q You will have to explain that to a judge or a jury, because I don't know what you are talking about in your last answer.

A If there were no word "worthless" per se in 24, or in any other portion of fiscal 1972, but if instead the wording was, as I see it here, the amount was charged off as an extraordinary item, this amount was deemed not to be recoverable because of the losses sustained, then this was my characterization of the wording of the complaint, in effect "worthless."

If something is written off as an extraordinary loss, I characterize it as worthless.

Q As of what date?

A When I characterized it?

Q Yes.

A As of the date I prepared the complaint, more or less. Within a week or so before.

Q Not as of September 19, 1969?

A No.

Q Not as of November 20, 1970?

A May I see what you are referring to?

Q I asked you --

A I would like to look at the exhibit.

Q I am the examiner.

A I ask you to show me the --

Q I am showing you nothing. November 20, 1970 is the date of the Lafrentz certification.

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A May I look at it to refresh my recollection?

Q I am asking you a date.

A You are referring to --

Q Will you answer my question and stop fencing with me?

A I am not fencing with you. You want me to answer the question without allowing me to refresh my recollection.

Q There is nothing for you to refresh. You have testified now that when you characterize this as worthless it was not as of September 19, 1969.

A Yes, right.

Q Now I am asking you whether that category of "worthless" was not as of November 20, 1970.

A I am asking you to allow me to look at the annual report which you have in your possession.

Q No, you don't need it for that answer. I will let you look at it later but you don't need it for that answer.

A How do you know I don't need it? You may not give me a complete answer.

Q You can answer that as to a date.

Let me ask you this --

A Just a second. I want to stay with this for a moment.

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Q You can stay with it as long as you want.

A There was somewhere mentioned --

Q Look --

A Just a second, please. Maybe I didn't quite understand your question. Will you repeat it?

Q I will ask you another question.

A Are you dropping the other one?

Q Yes. As of May 1, 1971, was that asset worthless to the defendant 3i Company?

A Where did you get the date May 1, 1970?

Q What difference does it make to you?

A On the basis, as you suggested, it makes no difference to me, I don't know.

Q You testified, did you not, that it was worthless as of the 1972 10K report, correct?

A Do you know what it is, sir? I was mistaken before when I thought you were looking at the 1971 annual report, which I never saw, which you had yesterday marked for identification. So that is what it was. I was not considering the 1970 annual report, but I don't know what there was on the 1970 report, but actually --

Q You want to see --

MR. FELTON: No. I move to strike all that

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portion of it. I consider -- I didn't mean the 1971 report. I meant the 1970 10K. Do you have that?

Q I don't have it.

A You don't have the 1970 10K? The 1971 10K?

Q I don't think it has been marked here. The only thing we have here is the 1971 annual report.

A Let me see if I understand your question. Would you repeat it again, please, because you threw me off with May 1, 1971, because the fiscal year doesn't end then. It ends June 30, 1971.

Q Didn't you testify here a moment ago that you determined, when you made the allegation in paragraph 55 of the complaint, or wherever else you were in the complaint, that when you alleged and complained that the data bank license was worthless to the defendant 3i Company, that that allegation was made by you as of the 1972 10K report which was filed with the SEC?

A Yes.

Q All right. So in order to spare all the time of going through dates, it was not worthless to the defendant 3i Company until it appeared in that report?

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A I see what you mean. The first time I knew about the fact that it was worthless, or what I characterized as worthless, was when I saw the fiscal 1972 10K.

Q And that was --

A That was as part of my preparation work for the amended complaint. Now I understand what you mean.

Q You don't understand what I mean. That is part of what I mean. And then you characterized it as worthless as of that date?

A In answer to the question I referred firstly to the notes to the consolidated financial statement, apparently 1971 10K, wherein it is stated under data bank license, item 4:

"During the fiscal year ended June 30, 1971 the Company continued to incur costs in connection with data bank development. Management believes that increased marketability of bio-medical information services can be achieved in the near future."

MR. KUNEN: Mark it.

A This I got as part of my investigation of the SEC files, it is one of the Washington papers.

(Document, above referred to, was marked Defendants' Exhibit 26 for identification, as of

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this date.)

Q What else do you want to say?

A That is what I said.

Q What is the significance of that?

A The significance of what I read in, based on what I first found, occurred in 1971.

Q You are referring to what you read from Exhibit 26?

A Yes, this was my interpretation of it, that it was meant that they were never making money with this particular data bank license, and that this was -- and in view of where this was contained under "data bank licenses," and considering that it followed immediately after it and as part of the same paragraph, involving the agreement with Excerpta Medica.

Once again, with the inference raised in the following years, 1972 10K, where there was this complete write-off. This is my interpretation of it.

Q So that Exhibit 26 is taken from which report?

A Apparently it is the 10K for 1971.

(A short recess was taken.)

Q Exhibit 28 for identification was a document that you presented taken from the 10K for the year,

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fiscal year, ending 1972, right?

A You are holding it, is that right?

Q Yes. It was predicated on what is contained in that statement that you reached the conclusion that the data bank license was worthless as of the date of that 10K report? That is what you testified earlier, is that correct?

A I would say this, just to repeat it again so we should understand, when I saw this particular page of the 10K, and I read its contents, I determined from reading that page of the particular 10K that, as I characterized it in the complaint, this was a worthless item for the defendant 3i, and especially in view of the fact of the terminology of this particular page, and also, as I indicated to you on another exhibit, they wrote off as an extraordinary loss, $1 million or so.

Q During that same period that the 1972 10K covered? Right?

A You didn't finish your question.

Q That is the question.

A What is the question? Repeat the question.

Q You said they wrote it off on another document, and that document covered the same period?

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A Yes, now I understand, yes.

Q It was as of that date that you determined that the data bank license was worthless to the defendant 31 Company?

A As of this particular report, I saw proof in the form of this particular exhibit that the company considered it not recoverable, which I characterized as worthless.

Q As of that day?

A As of reading the report.

Q As of the period covered by that report?

A If you recall --

Q Will you answer that question?

A That was definite proof to me at that time, for that particular time.

Q For that particular time as of that period? Can't you answer that yes or no?

A Completely worthless, yes.

Q You produced the copy from the 10K report for the year 1971, which is Exhibit 26?

A Yes.

Q As of that period you did not reach a determination that the data bank license was worthless, did you?

A When I was in Washington and I saw this particular page and read it, and in view of the 1972 10K --

Q Forget the ---

A Just a second. I inferred that in 1972 the company was saying or pointing in that direction of worthlessness, and the statement I read involving the fact of continued costs in connection with data bank development and the company believing that the increased marketability can be achieved in the near future, all under the head of "data bank licenses" referring to the Excerpta Medica agreements.

Q Did you reach the conclusion as of that 1971 10K report that the data bank license was worthless as of that report? Yes or no.

A To that I can only say maybe. Not yes, not no. Maybe. In light of what I saw in 1972 and reading that, maybe. Certainly not yes and certainly not no, but maybe. But strongly leaning to yes, in view of everything else I learned from the investigation.

Q It took the 1972 report to get you to the conclusion of maybe yes and maybe no?

A 1972?

Q The 1972 10K report, it took what you read in the 1972 10K report to get you to that "maybe"?

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A For 1971?

Q Right.

A Yes, but strongly toward "yes."

Q All right. Stop playing around with those papers and concentrate on what I am asking.

A I am concentrating. I just want to refer to another document.

Q That was the first, earliest, "maybe"?

Will the record show that you are going through a lot of papers and not concentrating.

A I am under oath, sir, and before I answer I would like to consider a moment. I am concentrating. I want to consider your question in light of all the papers that I have here under Exhibit 11.

(Discussion off the record.)

A Would you repeat that question, please?

(Record read.)

A For the year ended June 30, 1971? Yes, I believe so. I can't find any reference in the papers.

Q In paragraph 131 of your complaint, amended complaint, you allege defendant Lafrentz in its aforesaid certificates omitted the facts concerning the aforesaid letter agreements between defendant Von Eugen and 31 Company.

In the first place, are you referring to one certificate? You used the plural "certificates." What are you referring to?

A That should be "certificate."

Q Would you state for the record what you claim are the facts that when omitted from the certificate regarding the letter agreement between the defendant Von Eugen and 31 Company?

A If I may refresh --

Q Before you answer that question, I ask you whether you mean its certification or footnotes or what are you referring to?

A What I mean is this. The certificate --

Q Let me rephrase the question. I will withdraw it.

A I withdraw my answer.

Q Exhibits 13, 9 and 14 constitute the consolidated balance sheet of 31 Company/Interscience Incorporated for the fiscal year ending June 30, 1970, is that correct?

A Will you repeat the question?

(Question read.)

A These three certificates --

Q Not certificates.

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A These three exhibits are the balance sheet, the consolidated statement of operations, the accountants' report and notes to consolidated financial statements.

Q At the bottom of Exhibit 9 there is a signed statement by Main Lafrentz & Company dated November 20, 1970

A Yes.

Q My question to you is, without for the minute asking you to tell me what facts you claim were omitted in paragraph 131 of your complaint, whether you claim those omissions were omitted from the statement which was signed by Main Lafrentz & Company?

A Paragraph 131 of the amended complaint, as prepared by me in 1973, refers to the signed statement, as you say, the accountants' report, as well as the notes to the consolidated financial statements, which I assumed when I prepared the complaint was prepared by Main Lafrentz or read by them.

It states:

"Notes to consolidated financial statements."

Q What do you claim was omitted specifically with regard to your allegations of paragraph 131 of the complaint? Take a look at it and answer me as to that allegation alone.

A Firstly, nowhere in the certificate --

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Q When you use the "certificate," please make a distinction between the notes and the signed statement.

A Firstly, nowhere in the accountants' report of Main Lafrentz & Company on Exhibit 9 is there any statement pointing out that the $1 million plus asset on the balance sheet was not really a data bank license at cost. Nor is there any explanation in the notes to the consolidated financial statements which would or should have been inserted as to the non-payment of the $150,000 on April 27, 1970, that the books do not reflect, if that was the case, the balance supposedly owing to Von Eugen of $150,000.

And, furthermore, that the notes to the consolidated financial statements are misleading in view of the agreements between Von Eugen and 3i Company, by not identifying a broker, so to speak, as part of this transaction.

And in reading the notes wherein it was stated in part:

"The consideration for this right is $1,000,000, including 66,666 shares of class A common stock which the company can be required to purchase at $15 per share in October 1971,

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and 30,000 shares of class A common stock to be issued on December 1, 1970 which the company can be required to purchase at $5 a share in July 1971." By omission of the agreements, material omissions --

MR. KUNEN: I move to strike out your statement.

THE WITNESS: You asked me.

Q I am not asking you whether they are material or whether they are misleading, and I move to strike out your conclusions, and I am merely asking you the facts, what you claim was omitted.

A Furthermore, the first sentence of this paragraph under "Notes to Consolidated Financial Statements" --

Q Of what? Note 1?

A Yes.

"In September 1969 the company entered into an agreement, subsequently amended in June 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of bio-medical information."

I believe that is incorrect and misleading, in view of the fact that I don't believe that this is a

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true statement of the letter agreements.

MR. KUNEN: I move to strike out "incorrect and misleading." I only asked you for the statement.

A What I consider to be the amendment in June 1970, and I know of no amendment in June of 1970 with Excerpta Medica Foundation. That is incorrect. There was no -- reading the sentence it would appear that the company's agreement, which was subsequently amended in June of 1970 is with Excerpta Medica Foundation. This was a complete attempt to obscure the fact that there was another party to this transaction of Fred Von Eugen.

MR. KUNEN: I move to strike out "This was an attempt," and everything that follows that.

Q I am only asking you, without your conclusions, and please give it to me without your conclusions, as to what you claim was omitted that should have been included.

A In note 1, as I previously just a moment ago read to you, the agreements between Von Eugen and 3i were omitted. And where it has been stated "subsequently amended in June of 1970 with Excerpta Medica Foundation," I believe was misrepresentation or misleading.

MR. KUNEN: I move to strike out "I believe

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was misrepresentation or misleading."

A I do not believe there was any amendment of the agreement with Excerpta Medica Foundation in June 1970, as it is stated in the note 1 to the consolidated financial statements.

Q Is there anything else that you claim was omitted?

A In note 1 to the consolidated statement, as I say, there is no reference whatsoever to the aforesaid letter agreements between Von Eugen and 3i to allow anyone to understand they existed.

The way the note 1 is drawn, it would appear that the 30,000 shares was part of a subsequent amendment of an agreement with Excerpta Medica Foundation and 3i Company.

I referred to the paragraph that begins "In September 1969" and ends with the words "being negotiated."

And it is contained on Defendants' Exhibit 14 for identification.

Q Is there anything else which you claim in paragraph 131 of your amended complaint which you claim was omitted?

A 131?

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Q 131 of your amended complaint.

A It only refers to letter agreement between Von Eugen and 3i Company.

Q All right, not 131 of the complaint, any part of your complaint.

A 131, it is alleged defendant Lafrentz in this aforesaid certificate --

Q Tell me without going to the allegations of the complaint.

A They fail to set out that they failed to pay the $150,000 due. It is basically inconsistent with the testimony I have indicated regarding 131.

Q I want you tell me without saying "basically," or "not basically." Just tell me what you claim was omitted from the certificate and the footnotes of Main Lafrentz which you claim should have been included.

A When you say footnotes of Main Lafrentz, you are referring to those contained on Exhibit 14?

Q I am referring to that contained in Exhibit 14, and I am referring not only to the footnotes but I am referring to everything which is contained in Exhibit 13 and Exhibit 9 and in Exhibit 14.

A Exhibit 9, you are classifying as the footnotes of the Main Lafrentz report?

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Q That is correct. Isn't it? Isn't it the footnotes of the Main Lafrentz report?

A As I testified before, I assumed that these notes were prepared by Main Lafrentz, but there is no indication anywhere that it was footnotes prepared by them. It is just entitled here as footnotes to consolidated financial statements.

Q Do you have any doubt about it, as an accountant?

A I told you I never prepared a certified accountant --

Q You have looked at plenty of them?

A No, I haven't.

Q All right, go ahead.

A For three years of training as an accountant, you begin as a junior and hopefully reach the level of what is called the semi-senior.

Q You passed the certified public accountant exam and you are not a dope when you pass that. You have to know something about accounting, don't you?

A At the time I think I did know. Whatever subjects were required of me. But just a moment ago, when you said I looked at many statements, I have not looked at many statements. That is why we are having difficulty in the terminology of my complaint.

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Q We will let the court decide that. Now answer my question. I want you to look at those exhibits.

MR. KUNEN: Repeat my question to the witness.

(Record read.)

MR. KUNEN: I am not going to knock myself out continually repeating questions to you and then you go on a tangent.

THE WITNESS: I addressed my request to the stenographer and not to you.

Q You are making me continually repeat questions which is unnecessary.

A I will let the record stand for itself, but I will say in the midst of one of your other questions you got off on a tangent as to my accounting ability, so if I say you forgot or I forgot your original question, I would like the record to stand by itself.

MR. KUNEN: It speaks for itself, whatever it says. Now get back to my question.

(Question read.)

Q Looking at Exhibits 13, 9 and 14, is there anything in addition to the testimony that you have just given within the last five or ten minutes on this subject matter, which you claim has been omitted from these documents and you claim should have been stated?

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A As to Von Eugen?

Q As to anything.

A All right. As I previously testified regarding Von Eugen and the letter agreement, there has been no mention of Von Eugen, and there has been no mention of the fact that there was actually two parties plus 3i Company to these agreements for determination of this balance sheet item asset.

The certificate and the notes to consolidated financial statements do not -- let's look at the certificate first -- the accountants' report, I should say -- which is on Exhibit 9.

The only reference to the data bank license is found in the second paragraph in which it says:

"In our opinion, subject to the realization of carrying value of data bank licenses."

That is the only subject clause, or as you use the term "qualification" in your questioning before, in any respect to -- referring in any way to -- the data bank licenses.

This subject or qualification, as I just stated, subject to the realization of carrying value of the data bank licenses, is what I indicated the other day as the apples and pears.

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There was a new company starting up, with an asset on their books of over $1 million, which I previously testified was 62 per cent of the total assets. This "subject to the realization of carrying value of data bank licenses," is consonant basically with another paragraph of these notes to the consolidated financial statements, to the effect that the company commenced marketing its services in connection with the data bank licenses prior in the year, and had not realized any significant amount of revenue from these sources.

This was a cautioning that this was a new start up of a new license, this subject clause or qualification, but in no respect was it indicated that the data bank licenses at cost of over $1 million.

This particular case identified in note 1 is $1 million. It was really a purchase at cost. Thus permitting the defendant 3i to materially enhance its balance sheet assets using legended stock, in effect stock rights, as the purchase of an asset at cost, in quotations, which I indicated in paragraph 134 --

MR. RICHARD G. LYON: What is the answer to the question?

THE WITNESS: The answer to the question you have here is that there is no mention whatsoever

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of the facts, the complete facts, which would not make the statement not misleading.

Q What do you say was omitted? What should it have said?

A It should have said, firstly, something to the effect that the data bank licenses appearing on the balance sheet consisted of legended stock and that the description on the balance sheet should not have been "at cost."

Q What should it have been?

A Data bank licenses. It could have, perhaps, been provided for on the balance sheet of the company, firstly, as some type of provision that in the future, in October of 1971, that it would cost the company 46,000 shares times $15 if Excerpta Medica called for it, but what you actually had here there was no warning to the investor of the fact that the data bank licenses were truly not at cost.

Q I am asking you what you wanted them to say on the first page of the balance sheet.

A Let me talk about the opinion first. I didn't believe they should have given, in view of the fact that there was such a tremendous percentage, 62 per cent of the assets, in data bank licenses at costs.

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Now, thinking it over and considering it, I don't think they should have rendered even an opinion.

Q It is not the question.

A That is really basically what I was searching for.

Q What do you want them to do on the balance sheet?

A Who is "they"?

Q Main Lafrentz. What was supposed to be on the balance sheet in connection with the data bank license of a million some odd dollars with a reference to note 1? How do you want that to be changed? How do you suggest that should have been changed?

A I really think that now, as I am reasoning this with you, I don't think they should have rendered an opinion at all.

Q It is not my question.

A First of all, your question is what should they have done with the balance sheet? This was a balance sheet of 31, they were rendering a report on this balance sheet. What they should have done is they should have said to the management of 31, "You have here a balance sheet with an item of 62 per cent of your total assets involving, firstly, apparently with Van Eugen, a change where you really have not considered

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it as a liability to begin with, and now you are giving him lettered stock for the balance that you supposedly owe him, and I have given lettered stock to Excerpta Medica Foundation, and furthermore, this is the start up of a new venture. We think you are not correct in considering this as an item on your balance sheet, especially labeling it data bank licensing at cost.

"Therefore, we should not give you an opinion which would mislead any investor who would read this thing quickly."

Q You say this is a balance sheet of the company?

A Correct. And this is the second page to the report.

Q Just a minute. Let's stick to the first page. The first page alongside of that item refers to note 1.

A Before that it says "at cost."

Q But it refers them to the note 1, does it not?

A Yes.

Q And note 1 tells them all about the repurchase of the stock and all of the facts which are set forth therein, does it not?

A No.

Q Doesn't note 1 refer to the fact --

A You didn't say the fact. You said all the facts.

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It omitted all references to Von Eugen, and it misleads people by stating that the amendment was with Excerpta Medica Foundation, and it does not state that there was a Von Eugen.

When it comes down to the 30,000 shares it does not state what the amendment was and, frankly, in view of the fact that this is a complete change in the balance sheet, where an item as huge as this is, there should have been some detailed statement exactly how this figure was arrived at, plus also there should have been some statement that we cannot give you an opinion or an opinion cannot be given on the basis of the asset being stated at cost.

Q Didn't they tell you that it is subject to a realization in their certificate?

A It said in the report, in the certificate, "Subject to the realization of carrying value of data bank licenses."

Q All right.

A All right what?

Q Isn't that --

A This is subject to realization of carrying value and it alerts people, if anything, to the fact that this was a start-up operation, and this is a big purchase.

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And that is in line with the paragraph that follows that, in the notes to consolidated financial statements, that the company commenced marketing its services in connection with the data bank licenses and had not realized any significant amount of revenues.

If there was anything that this "subject to realization" would refer to, it would refer to the paragraph of "During the second half of the fiscal year ended," and not to the paragraph before that, as far as the consideration.

Q So that there was an alerting, was there not?

A No.

Q No alerting at all? Answer this. You say there was no alerting?

A I said, if any.

Q I am asking you.

A There was an alerting to this extent, if any, only as to -- not the propriety of -- the fact that it was an asset at cost, but the possibility that there might be rough going to realize the cost.

Q What else do you say was omitted that should have been included?

A By the way, in that regard, it is understandable that in a start-up operation, looking from a reasonable

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investor's point of view, that this was, in view of the fact that there was such a large asset on the balance sheet, that the company would have a year or two before it really can make what it is supposed to make, but no alerting to the fact that this was merely a materially enhanced item on the balance sheet of something that really was not a purchase at cost. That is my opinion.

Q You have expressed yourself. We will have to take everything that you say and put it together. What else do you claim was omitted that should have been alleged?

A That is about it, I believe.

MR. KUNEN: It is almost four o'clock, so I will take up one more subject.

THE WITNESS: I would like to go go 4:30 o'clock.

MR. KUNEN: I don't know if I have the capacity with you. I feel too tired. I will put it on the record. I think this is a trying examination so far as I am concerned, and I think we have gone consistently and taken a half hour for lunch, and I will quit at four o'clock.

THE WITNESS: The only problem is you can't

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get started Monday morning --

MR. KUNEN: I told you that the last time we were here. We are going continually. That is that.

BY MR. KUNEN:

Q In paragraph --

THE WITNESS: How much further do you have to go?

MR. KUNEN: I am going through the allegations as they concern Main Lafrentz.

THE WITNESS: I thought that was basically it.

MR. KUNEN: Some of them will go fast and some will go slowly. I can finish it up by Monday afternoon.

THE WITNESS: Can you really?

MR. KUNEN: Yes.

Q In paragraph 132 of the complaint you say:

"Defendant Lafrentz in this aforesaid certificate omitted the fact that defendant 31 Company had failed to pay defendant Von Eugen the second payment of $150,000."

The certification of Main Lafrentz was as of the period ending June 30, 1970, right?

A Yes.

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Q As of that date, as we have seen, there was a substitution of an obligation of 31 Company to issue 30,000 shares in lieu of $150,000?

A Right.

Q Where do you claim in the year-end statement an indication should have been made that the second payment had not been paid when there had been a substitution of an obligation?

A Well, firstly, what I indicated before was the notes of the consolidated financial statement, Exhibit 14, your Exhibit 14 for identification, wherein it notes:

"In September 1969 the Company entered into an agreement subsequently amended in June of 1970 with Excerpta Medica Foundation --"

This was bearing on this particular paragraph of the complaint in view of the fact that for some reason the existence of Von Eugen to this agreement, and also continuing in this note, the same paragraph, the existence of Von Eugen to this agreement was omitted.

Q That does not answer my question.

A Partly, to this extent. What you actually have here in this note was no information other than the fact, facts, in this note, that Excerpta Medica Foundation was the sole receiver of consideration for this data

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bank license, obscuring this fact that there was a $300,000 agreement with Von Eugen with $150,000 owing in April 1970 to Von Eugen.

Q It is not answering my question. I move to strike the answer.

A Perhaps if this part of the original agreement was in this note, there might have been some alerting to ones who read these notes, that something was going wrong with this entire agreement.

Q You can say a lot of things. You can say everything a man does from the day he comes into the office to the day he walks out. I am not asking you that question.

A The fact is that you had here a material asset and all the facts should have been disclosed, and this should not have been glossed over in the notes, by saying "subsequently amended the agreement in June 1970," and actually misleading the reader into thinking that the amended agreement in June 1970 was with Excerpta Medica Foundation, which was not so.

Q You claim that where an obligation has been paid during the course of the year, at the end of the year in the financial statement you have to indicate that? Is that your contention?

A Where you have --

Q Answer my question without giving me a story.

A Your general question?

Q Yes.

A If an obligation has been paid?

Q Yes.

A That at the end of the year it should not be mentioned in the financial statement? Of course I agree with that statement, as a general statement, yes. But this is not when you are dealing with a material asset stated as purchased at cost when it is otherwise obviously so.

(Discussion off the record.)

(Whereupon, at 4:00 p.m., the deposition was adjourned to October 15, 1973, at 2:00 p.m.)

Robert R. Felton

ROBERT R. FELTON

Subscribed and sworn to before me this 7th day of February 1974

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7642650
Qualified in Nassau County
Term Expires March 30, 1975

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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, NATHAN BORAK, C.S.R., Notary Public of the State of New York, do hereby certify that the foregoing deposition of ROBERT R. FELTON, pages 481 through 538, was taken before me on the 12th day of October, 1973.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF I have hereunto set my hand at the County and State of New York, this 23 day of October, 1973.

Nathan Borak

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON, :

Plaintiff, :

-against- :

WALSTON AND CO., INC., JAMES NISSAN, etc., :

Defendants. :

----------x

CONTINUED DEPOSITION of ROBERT R. FELTON, taken before Isadora S. Borak, C.S.R., Notary Public of the State of New York, held at the offices of Kaye, Scholer, Fierman, Hays & Handler, Esqs., 425 Park Avenue, New York, New York, on the 15th day of October, 1973, at 2:00 P.M., pursuant to adjournment.

BORAK REPORTING SERVICE, P.C.
150 Nassau Street
New York, New York 10038
- - -
WOrth 2-5057

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* * *

ROBERT R. FELTON , having been previously duly sworn, was examined and testified further as follows:

EXAMINATION BY

MR. KINEN (CONTINUED)

Q Mr. Felton, at the last deposition we discussed the production of the original of the Excerpta agreement which you said you had in your office. Have you produced it?

A No. What I have here are the exhibits that I made, those pages --

Q Without looking through that, what I would like you to do--

A Let me tell you what I have. This way we won't have any problems. I have certain pages which I have here with me today which for purposes of a motion before the court I have classified or characterized as exhibits, starting with Exhibit A through Exhibit I.

Q What you have handed me are some pages of the agreement?

A Yes. Those are the pages that I use for the purposes of the motion, the motion before the court.

Q Which motion are we talking about?

A This is a motion that concerns the defendants--

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Q Excerpta Medica?

MR. RICHARD G. LYON: Three of the foreign companies, is it not?

THE WITNESS: No. Three corporations which are subsidiaries of Excerpta Medica Foundation.

Q All right. We don't have to go into detail.

A When I say not foreign -- that has nothing to do with the matter we are talking about now except to the extent that there is a motion before the court as to jurisdiction.

Q Do you have a copy of the entire Excerpta Medica agreement in your office?

A I stopped in over the weekend to look and I couldn't find it.

Q Who marked, on the bottom of this, Exhibit A, B, et cetera? Is that your marking?

A Yes. I said I marked it.

MR. KUNEN: Mark as one exhibit the copy of the pages of the Excerpta Medica agreement which Mr. Felton has identified consisting of pages that he marked as Exhibits A through F to the agreement of September 10, 1969; 7 pages of an amendatory agreement, all marked as Exhibit G, dated January 14, 1971; and three pages of an indemnity agreement marked Exhibit H which indemnity agreement

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is dated September 19, 1969; and two documents marked I with a page number 44 and a page number 45.

Q And before we mark it you say, Mr. Witness, that those two"Is"are part of the original agreement of September 19, 1969, is that correct?

A Without having my notes, they are in the office, I believe so.

(Whereupon, the above described exhibit was marked as Defendant's Exhibit 27 for identification)

Q At the last session of your deposition that I conducted we were talking about a Von Eugen agreement that is an amendment in connection with the issuance of 7500 shares. Do you recall that?

A Yes.

Q Taken from a copy of Exhibit 11 ---

THE WITNESS: Off the record.

(Discussion off the record)

THE WITNESS: Please read the question.

(The question was read)

Q -- I show you a page which you Xeroxed from the S.E.C. files and I ask you whether this document, which is apparently part of a 10K report, covers the 7500 shares you referred to?

A This is one reference to the 7500 shares which were issued to Mr. Von Eugen.

Q And you found that in the 10K report of the company in the files that you examined at the S.E.C.?

A This is one of the pages where reference is made to the 7500 shares.

Q That you found when you examined --

A Yes. One of the pages that I found. One of the pages that I found.

MR. ZUNEN: Mark that.

Q Before you mark it, is the "Fred Eugen" in your handwriting?

A Correct.

(Whereupon the above described page was marked Exhibit 28)

A I just want to say this. It also might be, I believe it is a 10K but it might be another form such as an 8K.

Q On Paragraph 134 of your amended complaint you have alleged "Defendant Lafrentz permitted Defendant 3i Co. to materially enhance its balance sheet assets using legended stock, in effect stockrights, as the purchase of an asset at cost."

On what do you base your allegation of that "legended stock"is in effect stockrights?

A By the way, sir, I just want to say this, just to make a point which I have never made prior to this. For purposes of full disclosure here, I have not, I have not in any respect claimed attorney s work product in view of the fact that I am the plaintiff pro se. What I want to say is this, there is a certain point, though, where a line has to be drawn. You have heard my testimony on previous days. You have heard my testimony regarding the various exhibits marked for identification. Basically what you have here is this. Firstly, legended stock in itself, in and of itself, without the various inferences that were drawn with the amendments and the various other transactions involved here, was value on the books of 3i Co. at the same price as if the stock was readily available for sale. Forgetting about the stockrights situation. In effect, presenting a price which could not be utilized by Excerpta Medica if that was the intent of the parties to be used. Certainly if this stock were to be put on the market for sale, even if the stock was trading at a comparable price, I say even, I have no prices at hand, the unfairness of it is very evident and also the misleadingness of it is very evident.

MR. KUKIN: I move to strike out the "misleading" and I move to strike out the whole answer as not

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responsive to the question.

A You are asking me where I determin this and I say based on all the inferences and the intents of the parties plus also the fact that legended stock was set on the balance sheet of the company as equivalent to stock that would have been readily available and for sale.

Q You have no idea what the stock was trading for at the time?

A You are arguing with me. You asked me my question.

MR. KUNEN: I move to strike the answer again.

Q I am asking you a simple question. You are again comparing pears and apples.

A That is it. There are pears and apples here on the balance sheet.

Q Will you stop arguing with me and answer the question.

MR. FELTON: I move to strike your colloquy.

Q I asked you a question of how you arrived at an allegation that legended stock was in effect stock rights. That is all I asked you. Now, can you answer that or can you not?

A Oh, yes. I believe I answered it already but I planned to go further if you don't interrupt me.

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Felton

Q I have not interrupted you. Please answer that question without giving me a speech.

A You want a yes or no, is that it? Would you say then that in any descriptions I have given you up to now where I tried to give you a complete and fair statement where the answer does not behoove you or doesn't please you, you call it a speech. If your questions are framed for yes or no --

Q The court will pass on this.

You are evading the question.

A I am not evading it.

Q I will pass on to something else.

A I want to continue my answer without interruption from you and then we will have the court available for my complete answer. You asked me what was the basis for the statement.

Q That legended stock in effect was stock rights. That is a simple question.

A I didn't say that. There is more to it than that. It is not that legended stock was in effect stockrights. My statement in 134, which you read into the record, was that your client, the defendant Lafrenta, permitted 3i to materially enhance its balance sheet assets using legended stock, in effect stock rights as the purchase of

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an asset at cost.

Firstly, I testified ---

Q I asked you a simple question.

A Yes.

Q I asked you a question and I didn't ask you what you are trying to tell me. Bu are trying to make a speech about something I did not ask you. I asked you a simple question.

A You read to me 134. It wasn't a simple question.

Q I read it to you and asked you a question.

A What was your question?

Q My question was --- do you want me to take a half hour now to go back and have her repeat it?

A Have her repeat it and have it put into the record then.

(The record was read)

Q Answer my question or we will let the court pass on it. That's all.

A Legended stock -- and what I really want to say is this this is only one part of the question you read to me. This is what my point was. Now you are asking me the part of the question where you say "Legended stock in effect stock rights",correct? I just want to say at the outset, is this, legended stock, with the inferences and the intent of the parties to this entire

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transaction, as finally disclosed in the fiscal 1972 10K of 3i Co. as for the transaction between Von Eugen and the point of view just made, just a moment ago, about the exchange of 7500 shares, looking at just that one side of the transaction, a man, being Mr. Von Eugen in this case, being entitled to the $150,000 in April of 1970, agrees to accept in a letter agreement dated June of '70 to have his rights to the payment of April '70 which was not made to him exchanged for 30,000 shares of this legended stock.

And in this agreement of June of 1970, having this 30,000 shares approximately two years later, accepts 7500 shares instead and the description of the transaction as in Exhibit 28 which you marked for identification wherein it stated that Mr. Von Eugen was issued those shares, that is the 7500 shares, in settlement of and in place of all rights he may have against registrant, that is 3i Co.

There is another point that I testified to the other day wherein in the same 10K there is a statement that Excerpta Medica Foundation rights expired or terminated, I don't have the exact words before me, during the fiscal year 1972.

Furthermore, Excerpta Medica apparently claims

to have requested registration of those shares which were refused and has not taken any action on this to date.

I hope this answers your question, sir.

MR. KUNEN: I move to strike out the answer as not responsive.

Q You allege in Paragraph 136 of your amended complaint "Defendant Excerpta Medica never required defendant 3i Co. to repurchase 46,666 shares".

Do you have any documents which you came across in your investigation in any of the form 10Ks which has any reference to whether or not Excerpta Medica ever required defendant to repurchase the 46,666 shares or what happened between the parties in connection with it after the agreement was signed?

A At the outset, sir, I would like to state that my reading of your answer, I believe, indicates that this was admitted by Main Lafrentz & Co. but furthermore I would like to say that the inferences and circumstances of the statements made in the 1972 fiscal year '72 10K of 3i Co. and the --

Q I am only asking you --

A And the inaction, the inaction of Excerpta Medica to take legal action based thereon showed the intent in exactly what --

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MR. KUNEN: I move to strike the answer as not responsive.

Q I asked you to produce whatever documents cover that situation.

A The only documents I have, sir, are the excerpts of the 10K which have previously been given to you.

Q Previously marked on this subject?

A I believe so.

Q All right. That is all.

In Paragraph 139 of your complaint you allege "That the aforesaid data bank licenses was worthless to the defendant 3i Co. and in fiscal 1972 defendant 3i Co. wrote off the million-dollar cost as a complete loss." And am I correct in assuming that that allegation is supported by you by the testimony that you gave in connection with Paragraph 55 of the complaint when I questioned you on your allegation with regard to your claim that the data bank license was worthless to defendant 3i Co. and asked you wherever you used "worthless" in the complaint that testimony applied to the other allegations in the complaint.

A I believe, my recall, my recollection is that you referred to 139 the other day at the same time.

Q All right. And that testimony, whatever it was,

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applies to that?

A Yes.

Q Did you in your examination of the documents at the S.E.C., in connection with that data license, ascertain that the 3i Co. was given the exclusive right to market the Excerpta Medica data in the United States?

A I really can't say for sure. I do know this, that in my readings of the agreement, there were certain publications called E. M. Publications which, without referring to the exhibits I have given you, I would really not be able to give more than just a recall, but it seems to me that certain things, such as the E. M. Publications were reserved, and not part of the transaction for 3i.

Reserved to E. M., the group and not to 3i.

Q I am asking you whether or not it isn't a fact that Excerpta Medica granted an exclusive right to 3i Co. to market its medical information in the United States?

A You are referring specifically to the data bank?

Q Right.

A I believe that is so.

Q And did you at that time, in your examination of those records, ascertain that Excerpta Medica was

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a worldwide corporation?

A I didn't go beyond the statements of the parties.

Q What parties?

A Excerpta Medica and Si.

Q What did your investigation show?

As I say, I didn't go beyond --

Q What did those statements of the parties show? Did they show that they were a worldwide organization?

A With the surroundings of all their transactions, I really didn't make a determination --

Q I didn't ask you whether you made a determination --

A Really, at that particular juncture I wasn't concerned as far as investigation was concerned.

Q You didn't pay attention to what their business was?

A You say pay attention.

I read what they say they had. Whether I went into any other investigation, from a third party source, to determine if their statements were absolutely correct, no.

Q What is your recollection as to what you read as to what they said at the time you made your investigation and drew this amended complaint?

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A When you say "they" you are talking about Excerpta Medica?

Q Right.

A That they collected information and that the information that they collected --

Q What kind of information?

A Medical or scientific literature which they stored and they were able to retrieve from their computers. That is at least what they said that they did.

Q Is that the extent of it?

A They referred to a number of journals that they followed and --

Q Have you any recollection of the number?

A No, I don't.

Q All right. Go right ahead.

A I really was interested in the facts and figures involving the financial end of the transaction. I made no real determination from any third-party source as to the validity of statements that were made in the agreements or in the annual report.

Q What else did they say about it?

A If you tell me what you mean by what else, I will be glad to answer.

Q Did they indicate, for example, that they had about 500 employees, permanent employees, and seven

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offices in major cities throughout the world?

A That could be, but I didn't, that didn't really--

Q What do you remember in that regard--

A -- that didn't really -- please read my answer.

(The answer was read)

A -- have me form any definite basis as to the validity of whatever they said. I was concerned in the facts and circumstances of those agreements and the intent of the parties. The only thing that really impressed me was a statement by one of their attorneys who said that they are practically out of business now and that they had sold their assets to another company. That was told to me orally on the telephone after I instituted suit against them.

Q Was that the question I asked you?

A No.

MR. KUMEN: I move to strike out the answer as not responsive and merely voluntary information.

Q I asked you what you gleaned from your examination from the files of the S.E.C.

A You are asking again?

Q That is all I asked you. Now, if you have anything to add to that, add it --

A Basically, as I say, I was interested in the

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circumstances and intent of the parties in these transactions as it affected the finances of 3i.

Q In this Exhibit 15 and the balance sheet that is attached thereto, there is a statement "Data bank licenses, at cost, (1) $1,028,606?

A What is your question?

Q Did you notice that when you went through the S.E.C. files?

A Yes, surely.

Q And when you went through the S.E.C. files for the balance sheet for the year 1971 which was pre-prepared by Lybrand, Ross Bros. & Montgomery, you noticed, did you not, as indicated by Exhibit 16B that for the year 1971 they showed as an asset, data bank licenses at cost less accumulated amortization at June 30, 1971 of $8,303, Note 4, Schedule 7, and they gave a figure of $1,016,303 in comparison to the Main Line figure of $1,028,606.

Is that correct?

A May I see the actual report of '72, which you are referring to in your question?

Q '71?

A Or, rather. May I see that?

Q I was referring to Exhibit 16.

A Right. Yes. I'm glad you asked me that question.

MR. KUNEN: I move to strike out "I am glad you asked me that question".

Q Please answer my question without making any comments about being glad or sorry. Just answer the question and stick to the line, please.

A I will stick to the line to this extent.

You mentioned the accountants' certificate for the year 1971, that is why I said I was glad you asked me that. Because I wanted to put my answer to what you gave me, 16B, in focus with what I requested which was the actual report of the year 1971, Exhibit 16, wherein in the report you referred to as part of your question as to Lybrand, Ross Bros. & Montgomery, the first paragraph of the certificate, as you referred to it as a report, wherein they stated "We did not examine the financial statements of 3i Co. and subsidiaries for the year ended June 30, 1970, which statements were examined by other accountants".

Presumably, they're referring to Main Lafrentz & Co. and then they quote from the report or certificate of Main Lafrentz Co. (reading)

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Felton

Q In Paragraph 148 of your amended complaint you allege that for the year ended June 30, 1970, Scientific Literature Corporation sustained a net earnings loss.

Where did you get that from?

A At the outset I would like to point out that your answer on behalf of Main Lafrentz & Co. admits this net earnings loss in the amount of $1,055, Paragraph 26.

Q What has that to do with my question?

A I said at the outset, as part of my investigation of the S.E.C. files, as I believe I previously have indicated, in New York and Washington, and in reading the second amendment between 3i Co. and Scientific Literature Consultants, in the background, and in the context of the fact or facts that I determined S. Kim Kessler and Geraldine Kessler owned a substantial amount of the shares of Scientific Literature Consultants, Inc. and further that there was an employment agreement between these Kesslers and 3i for them to manage the Scientific Literature Corporation and in view of the fact that the original agreement or agreements provided for profits for the release of certain shares held in escrow and additional shares

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and in view of all that went before and all the other items that I have seen and found in my investigation, as I previously testified, the inference was very strong that there was not the profits as anticipated by the parties, but a loss instead, especially in view of the fact that those shares were released at such a future date, I mean such a current date, whereas the parties themselves couldn't have continued and waited for the final result and then made a second amendment.

MR. KUNEN: I move to strike the answer as not responsive.

Q My question to you was that you allege in your amended complaint that for the year ended June 30, 1970, Scientific Literature Corporation sustained a net earnings loss. And I asked you where you got that from yourinvestigation of the files in the S.E.C.

A The facts and circumstances surrounding the timing of the transaction as far as the second amendment in the light of the fact that the Kesslers were substantial owners of the Scientific Literature Consultants stock and also were in the management of 3i, managing the subsidiary, Scientific Literature Consultants for 3i.

Q You allege that they sustained a net earnings loss.

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Felton

Where did you get the basis for stating that they sustained a net earnings loss? Did you see any figures? Did you see anything?

A My inferences which proved to be correct.

MR. KUNEN: I move to strike out "Which proved to be correct".

Q Didn't you, in your investigation, I am looking at the papers, see a document which indicated that the loss was $1,055?

A Which papers?

Q The papers that you examined at the S.E.C.

A If there were, I didn't pay attention, I didn't see it.

Q You mean you went ahead and drew an allegation in the complaint, 148, that parties sustained a net earnings loss without knowing what the net earnings loss was, without regard to the amount of the loss? Is that what you did?

Answer yes or no. You can answer that.

A Without regard to the amount, yes.

Q Now I show you a document which is part of the file that you produced and it is taken from the, I believe, the 10K for the year ended June 30, 1970, and I ask you whether that document doesn't show that

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the net earnings loss of Scientific Literature Company was $1,055?

A Sir, you are a better accountant than I. You are correct.

MR. KUNEN: Mark it.

(Document taken from file from 10K for year ended June 30, 1970, was marked Defendants' Exhibit 29 for identification)

Q In the course of your investigation of the S.E.C. files, did it come to your attention that during the year ended June 30, 1970, Scientific Literature Corporation had a pre-tax profit of in excess of $86,000?

Did you ascertain that?

A No. Do you have figures to support that?

Q I am not being examined at the moment. I am asking you some questions.

A You were kind enough to show me the other figure. I thought you might be looking at some other papers and might have me refer to that as well.

Q Did it come to your attention that this company was paying a good part of its pre-tax profits directly to the 3i Co. for indirect, general administrative expenses of that company as against the Scientific Company?

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Yes or no? Did it or didn't it?

A I don't know what you mean.

Q That the parent company charged Scientific as against their earnings a very substantial part of their earnings?

A If it did, I didn't find that.

Q And you, of course, knew that the report that Main Lafrentz & Co. had certified to was a consolidated report?

A Yes.

Q Of the 3i Co. for the year 1970?

A Yes.

Q In Paragraph 149 of your amended complaint you allege that "Despite the aforesaid loss of earnings by Scientific Literature Corporation for the year ended June 30, 1970 and with the aforesaid provisions of the aforesaid agreement as to the earnings of Scientific Literature Corporation to June 30, 1971, Defendant 3i Co. entered into a "Second Amendment" dated November 2, 1970, whereby the earnings paragraph of the original agreement was declared null and void and the additional 44,600 shares of 3i Co. stock were issued to the shareholders of Scientific Literature Consultants, Inc."

You made that allegation in the amended complaint?

A Yes.

Q When you went down to the S.E.C. and looked through their papers you found the notes of Main Lafrentz which I am going to show you in a minute which read "On November 2, 1970, the company amended the agreement whereby it acquired Scientific Literature (SLC), a wholly owned subsidiary. The amended agreement released the company from certain restrictions in regard to the operations of SLC and required the company to issue to the former shareholders 44,600 shares of Class A common stock which have been or could have been earned contingent upon earnings of SLC.

Those shares are reflected as outstanding in the accompanying financial statements. In the opinion of the company SLC will achieve the necessary earnings which would have entitled the seller to receive those shares under the original agreement."

That is contained in Exhibit 12 which was a document that you produced as part of Exhibit 11 when you investigated the files of the S.E.C.

Did you observe that?

A Off the record.

(Discussion off the record)

A The paragraph you read to me is contained in

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the notes as you say that have been prepared by Main Lafrentz & Co.

Q The copy that you observed when you went down to the S.E.C.?

A Yes.

Q And had before you when you drew the complaint?

A Correct.

Q And didn't that give you a disclosure of the circumstances of this situation?

A What circumstances?

MR. KUNEN: Withdrawn.

Q Despite that statement that you read down at the S.E.C., you still made the allegation in Paragraph 149 of your amended complaint?

Please answer that yes or no.

A I considered the loss of earnings to be a contradiction to the note that you just read.

Q You considered what?

A I considered the loss of earnings as a contradiction to the notes that you just read to me. We agreed to the extent, that there was a net loss of earnings for the year ended June 30, 1970.

Q Of how much?

A For the SLC of $1,055. We agreed on that.

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Both as your answer and what you pointed out to me in a previous exhibit in some questions before. Now, considering that, and considering at the same time that a net loss for the year 1970, the fact that you have the second amendment whereby 44,000 shares, additional shares are issued to the shareholders of Scientific Literature Consultants, seems to me, seemed to me to be in contradiction and so is the note that you read to me had also indicated the complete facts of the fact that there was a net earnings loss, I feel that this note that you read to me would have been a full and complete disclosure.

Q. But the net earnings loss was contained in the 10K that was filed with the S.E.C., was it not?

A The reference is made in the complaint, reference--as stated in the complaint under Paragraph 161, to wit, "Defendant Lafrentz failed to disclose in their certificates and reports the fact that Scientific Literature Corporation had sustained a loss of earnings for fiscal year 1970 as applicable to the aforesaid (Second amendment) between Defendants 3iCo., Brodsky and Kessler.

(Discussion off the record)report.

Q As a securities expert you know, do you not, that the 10K report requires details of certain facts

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which are not required in an annual report.

Do you know that or do you not know that?

A I will not answer your question because of the way it was framed. I am not a securities expert. I have not claimed to be nor have I testified in any way in that regard.

Q You have testified that you are an expert in 10(b)5 and an expert in handling class actions in connection with 10(b)5. And in that connection I am asking you whether you knew or know that the 10K requirements have certain schedules which request more detailed information from an auditor than is required to be set forth in an annual report?

A Yes. However, when we are referring to reliance ... are referring to the annual report, sir. We are not referring to the 10K which is not available. It is available to the average investor but is not used by the average investor so far as securities determination as to buy, sell or hold.

Q But the 10K report is available to an analyst, is it not?

A To analysts? Yes.

Q And analysts are the ones who make the determinations which affect the market in connection

with the stock, isn't that correct?

Yes or no?

A When you say "make," you mean make exclusively or make as part of a movement of stock or --

Q Put it your own way.

A Putting it my way, the analysts, I am sure, refer to more specific documents than the average investor will ever see in their lifetime.

Q And the average investors rely on analysts, do they not?

That affects the market, doesn't it?

A No. This is one part affecting the market. It would be simple to say analysts affect the market, then there would be no reliance on brokers' statements or any other types of information including, as I previously testified to, annual reports, if it were so simple.

It seems to me if it were important enough to describe in the 10K the fact that there was a loss and which you pointed out then, it certainly should have been part of the footnotes or notes of the consolidated statement, in this particular, in regard to the paragraph on which you have been questioning me.

Q Regardless of the amount?

A This was a complete destruction of the original

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agreement in the sense, shall I believe, referring to it as characterizing it as null and void where you had a net earnings loss of $1,000, the agreement was superseded by a second agreement whereby the parties agreed that the earnings would be good, here, take 44,800 additional shares of our stock, in a transaction between 3i and substantial holders of its subsidiary, whereby the substantial holders of the subsidiary, the Kesslers, were also employees for management in the sense, of 3i, in the sense that they were running the subsidiary.

As I said before, the footnote or note wherein the statement was contained as to the second amendment or whatever, the way it was described, should have been amplified to the effect that furthermore the net earnings for the year 1970 are $1,055.

Q But you concede, do you not, that the annual report in the 10K did disclose the transaction with respect to the issuance of the 44,000 shares of stock?

A With material omissions, with a material omission.

MR. KUNEN: I move to strike the answer as not responsive to the question. The latter part of your answer.

Q Paragraph 161 of your complaint is your conclusion item in which you make charges against

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Main Lafrentz & Co., is that correct?

A Read the question, please?

(The question was read)

A Yes, charges, allegations.

Q And there are two things that you are talking about and only two things.

One is the data bank which you have testified to and the other is the Scientific matter which we have discussed this morning. Those are the only two charges that you are making against Main Lafrentz, isn't that correct?

A And all the circumstances surrounding those two matters.

Q Aren't they the two subject matters that you are talking about?

A Subject matter, correct.

Q All right. Now, you have, in Paragraph 161 of the complaint, alleged those two subject matters in various ways.

In the first sub-division after the colon, you allege it as a failure to disclose, right?

A The entire facts.

MR. KUNEN: I move to strike "The entire facts".

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A It is in there. It says the failure to disclose the entire facts.

Q The failure to disclose, you have already testified in this deposition as to where you contend there was a failure to disclose. And I am not going away from that.

That is your contention. . . I don't agree with it. I think it is wrong. But that is not the point. The point of the matter is that in the first two, that in the colon and semi colon you have claimed an alleged failure to disclose with respect to those items, right?

A The data banks, yes.

Q The data bank is the first one and the Scientific Literature is the second one?

A Yes.

Q Then you go on in the next colon and you say "Defendant Lafrentz aided and abetted in connection with the data bank"--

I am not going to read the whole thing.

A All right.

Q Now, on what do you base your allegations that Main Lafrentz aided and abetted and whom did they aid and abet and how did they aid and abet?

A This I respectfully state to you is my work product and at this point I say this to you.

I have given you a line-by-line testimony as to the various allegations of the complaint. When you were going into 161 as to my conclusion allegation statements, I say at this time this is beyond the scope of this exam.

Q And you refuse to answer the question?

A That is right, on the ground that this is my work product. All the facts up till Count 1, as it affects your company, which I have stated in this amended complaint, I have testified to completely and openly to the best of my knowledge and understanding and belief.

MR. KUHN: I move to strike out, "Completely and openly", because you know I don't concede it and I don't accept it. You have testified.

Q But I am asking you as the plaintiff in this action to answer my question and you have declined to answer it.

A As an attorney I say this, that any questions, when you are going into the various allegations of 161, which is the subject not of the facts but of what I plan to prove, I say, sir, are not facts merely but consist of my work product. I have given

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with all the documents available to you and I have gone line-by-line with you on every item of the complaint.

At this particular point I say with regard to items in 161, which is the specific count relating to your client Main Lafrentz, I decline to answer.

Q You go on in the next semi-colon and you say "Defendant Lafrentz aided and abetted the misrepresentations of the defendant 3i Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid agreement in order to defraud, deceive and mislead plaintiff and the class. And I ask you what do you base that statement on, that allegation?

A Any questions relating to the allegations in 161, I must at this time advise you that this involves attorney's work product.

Q And you refuse to answer any questions as to any of the allegations in that aragraph with regard to aiding and abetting as you have alleged it going beyond what I have read to you?

A Yes.

Q And now I ask you the question -- and you are going to take the same position, I take it, with regard to your allegations that defendant Lafrentz knew or should have known of the alleged non-disclosure,

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is that correct?

A No.

MR. WINN: Did you say no or yes?

THE WITNESS: Not completely..

Q What is the basis for you alleging that the Defendant Hafrentz knew or should have known of the numbers ---

A At this time I was confused. I didn't know you were referring to the same paragraph. So my same objection is applicable.

MR. KUNEN: All right. I press those questions and we will have to get a ruling on it as well as some of the other questions.

I have no further questions, subject to what I just said.

EXAMINATION BY

MR. RICHARD G. LYON:

Q Mr. Willis asked you to produce some documents on this examination of you and one of the items he asked you to produce were the Excerpta Medica agreements. You produced today a number of pages from those agreements which have been marked as Exhibit 27 for identification. And you testified today that you couldn't find complete copies of the agreements in your office.

Do you have any other pages in your office that you did not bring with you today?

A If you recall, I just stated that I spent time over the weekend looking and I really haven't been able to find anything other than those pages there.

Q So it is your testimony now that what has been marked as Defendants' Exhibit 27 are the only documents you have from the Excerpta Medica agreements?

A Yes. But I also say that in a spirit of cooperation that I will look again this week and will certainly make them available to you and all those agreements, of course, the pages are from the S.E.C. files that I photostated in Washington.

Q Mr. Willis also asked you, and I think you agreed to produce, certain work sheets related to another exhibit.

Do you have those work sheets with you today?

A Yes, I do. But I will give them to you tomorrow because we will be adjourning to your office then. I will show them to you now but I will give them to you tomorrow and you can photostat them.

At the same time, I would also like to bring up to date the fact that you have all the original agreements and you are going to give me copies of them

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tomorrow as well.

I will show them to you now.

MR. LYON: I would like to have them marked today if you don't mind since I may have a question or two on them.

THE WITNESS: Sure.

MR. LYON: I would like marked as Defendants' Exhibit 30 for identification an 8-page document produced by Mr. Felton, a handwritten document.

(Eight-page document referred to above was marked as Defendants' Exhibit 30 for identification)

Q If we have gone over this before, Mr. Felton, I apologize.

When was this document prepared?

A Frankly, I am very honored that you call it a document.

Q When was Exhibit 30 prepared?

A This is my work sheet or my reconciliation of my brokerage accounts which were prepared as I received my statements to verify more or less the accuracy of my brokerage accounts.

Q Is it fair to state that those were prepared over a period of time, added to each time you received a statement from your broker?

A Yes, there are certain items such as interest and other items that I kicked off the brokerage accounts. And this is something similar to a reconciliation of your checking account.

MR. LYON: I have no further questions.

MR. WINN: I have none.

(Whereupon, the examination was ~~adjourned~~ COMPLETED at 3:40 P. M.)

- - -

Robert R. Felton

Subscribed and sworn to before me

this 7th day of February 1974

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7642650
Qualified in Nassau County
Term Expires March 30, 1974

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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, ISADORA S. BORAK, Notary Public of the State of New York, do hereby certify that the foregoing deposition of ROBERT R. FELTON, was taken before me on the 15th day of October, 1973.

The said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by myself and then transcribed.

The within transcript is a true record of the said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

In witness whereof I have hereunto set my hand and seal of office at the County and State of New York, this 17th day of Oct 1973

Isadora S. Borak